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A MANUAL FOR SOLICITORS, PUBLIC ANALYSTS,
INSPECTORS, TRADERS AND OTHERS

BEING A

CONSOLIDATION

OF THE

SALE OF FOOD AND DRUGS ACT, 1875
SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879
MARGARINE ACT, 1887
SALE OF FOOD AND DRUGS ACT, 1899

BY

CHARLES JAMES HIGGINSON
OF THE INNER TEMPLE, BARRISTER-AT-LAW

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SECOND EDITION
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PREFACE TO THE SECOND EDITION.

A SECOND EDITION of this Handbook having been called for, all Cases have been brought up to date, and, while the original form of the book has been adhered to, some of the subjects have been treated somewhat more fully than in the First Edition.

In the Appendix will be found the Regulations of the Board of Agriculture dealing with the question of Water in Milk and Skimmed and Separated Milk. No Regulations have as yet been issued in respect of Water in Butter, or to the use of Preservatives in Food.

C. J. H.

1 NEW COURT, TEMPLE, E.C.,
November, 1901.

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PREFACE TO THE FIRST EDITION.

AN endeavour has been made in the present work to consolidate the four Acts in operation in connection with the Sale of Food and Drugs. The necessity for such a consolidation arises from the fact that legislation has been piecemeal ; and, consequently, the relation of the various Acts to one another is not readily appreciated. The Act of 1875 has been taken as a basis, and the provisions of the subsequent Acts have been embodied in it, so as to show at a glance in how far they modify or enlarge its operation. Traders will find in the Introduction a short summary of some of the more important provisions of the Act of 1899. The four Acts will be found *in extenso* at the end of the book, as well as the General Orders issued by the Local Government Board regarding the Registration of Manufactories and Premises, and the Regulations as to Competency of Public Analysts.

C. J. H.

1 NEW COURT, TEMPLE, E.C.,
May, 1900.

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In place of “The Court held, however, that the addition
“ of milk was made fraudulently, and that
“ an offence had been committed under
“ the Section.”

*read:—*The Court held, however, that the sale was
to the prejudice of the purchaser, and that
an offence had been committed under the
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INTRODUCTION.

SALE OF FOOD AND DRUGS ACT, 1899.

IMPORTANT POINTS FOR TRADERS.

THE Sale of Food and Drugs Act, 1899, which came into operation on 1st January, 1900, introduces so many important alterations in the law that it is considered desirable to enumerate and explain those of its provisions which are likely to affect the position of traders.

SECTION 1.

The Commissioners of Customs are given power to Importation of sample at the port of entry consignments of margarine, margarine-cheese, cheese and butter, and any other agricultural and other produce. article of food to which the Act may be extended by an Order in Council.

Prosecutions for importing such articles improperly marked are to be undertaken by the Customs authorities. When imported, packages containing margarine, margarine-cheese, adulterated or impoverished butter, or tins containing condensed separated or skimmed milk are to be conspicuously marked describing their contents. The marking of packages containing margarine

Marking of imported goods.

or margarine-cheese should be in accordance with Section 6 of the Margarine Act, 1887, and Section 6 of the Act of 1899, *i.e.*, on the top, bottom and sides in printed capital letters not less than three-quarters of an inch square. It must be on the package itself and not on a label or ticket.

The provisions as to sampling show a considerable advance in the direction of preventing the importation of adulterated food improperly marked. Hitherto the methods employed to this end have proved too cumbersome to be effectual. Now it is only necessary to lodge information with the authorities as to suspected marks or brands in order that samples may be taken at the port of entry. If proved to be adulterated, proceedings will be taken against the importer. No power is given to confiscate as in the case of tea under Act of 1875, but the Customs authorities will notify the Board of Agriculture as to the destination of the goods.

SECTIONS 2 AND 3.

Local
Govern-
ment Board
and Board
of Agricul-
ture may
procure
samples
and act in
default of
Local Au-
thority.

In matters affecting the general interest of consumers or of agriculture, the Local Government Board and the Board of Agriculture have power to procure samples, and when a local authority is lax in putting the Acts into force in its own district, more especially in the matter of procuring samples, either the Local Government Board or the Board of Agriculture, as the case may be, has power to enforce the Acts and charge the local authority with the expenses. This section should prove to be a remedy for the complaints which are sometimes made by traders that the inspectors do not act impartially in taking samples. Those localities where the Acts have

been allowed to be neglected can now be stirred into activity.

SECTION 4.

Power is given to the Board of Agriculture to fix standards of purity in the case of milk, cream, butter or cheese. Where on analysis such articles show a deficiency in any of their normal constituents, or where it appears that water or other extraneous matter has been added so as to bring the quantity above the standard allowance, it will be presumed either that adulteration has taken place or that the article is injurious to health. It will be open to a defendant, however, to prove, if he can, that no adulteration or alteration has taken place. In some instances the authorities will find it difficult to arrive at a satisfactory standard, say, for example, as to the proportion of water permissible in butter or in cheese. There is, however, one matter concerning which it is eminently desirable that some standard should be fixed, *viz.*, the use of preservatives in food. At present there seems much uncertainty and conflict of evidence as to what percentage may or may not be considered injurious.

The regulations of the Board of Agriculture regarding milk and skimmed and separated milk have been issued, and will be found in the Appendix.

A Departmental Committee is now taking evidence regarding butter, and doubtless regulations will be issued in due course.

SECTION 5.

Margarine-cheese is defined by Section 25 of this Act as any substance, whether compound or otherwise, which

Board of
Agriculture
may fix
standards
of purity.

Margarine-
cheese.

is prepared in imitation of cheese, and which contains fat not derived from milk. This substance, sometimes known as "filled cheese," is put on the same footing as margarine. It must not be dealt in, exposed for sale, or sold, except as margarine-cheese; when sold by retail it must be labelled, and must be delivered in (not "or with") a marked wrapper. When dealt in otherwise than by retail, it must either be enclosed in packages marked "margarine-cheese" in the same way as margarine packages, or it must be itself conspicuously branded "margarine-cheese".

SECTION 6.

Marking. Packages containing margarine or margarine-cheese have to be marked as provided by the Margarine Act, 1887, *viz.*, branded or durably marked margarine or margarine-cheese on the top, bottom and sides in printed letters not less than three-quarters of an inch square. To this must now be added that the brand or mark shall be on the package itself, and not solely on a label or ticket or other thing attached thereto.

Wrapper. When margarine or margarine-cheese is sold by retail it must now be delivered in (not "or with") a wrapper, and the words "margarine" or "margarine-cheese" are to be printed in capital block letters not less than half an inch long. The wrapper need not be of any particular size, and may take the form of a bag or cardboard box provided that the lettering is not less than three-quarters of an inch long and of the requisite type. No other printed matter is to appear on the wrapper, not even the name and address of the seller. The increased size of the letters and the prohibition of any other printed matter

on the wrapper are alterations which should be carefully noted.

The Margarine Act, 1887, required that margarine, when sold by retail, should be delivered in "or with" a paper wrapper, etc. The words "or with" are now repealed. The Act of 1899 says nothing as to whether it is the inside or the outside wrapper which is to bear the notice "margarine" or "margarine-cheese". The opinion of the High Court has been clearly expressed, however, that it is the outside wrapper which should be marked, and a plain outside wrapper, unless put on at the request of the purchaser, would be taken as evidence of intention to deceive on the part of the seller.

SECTION 7.

The Margarine Act, 1887, made it incumbent on every occupier or owner of a manufactory of margarine to register with the local authority. The Act of 1899 extends this obligation to any premises wherein the business of a manufacturer of margarine-cheese or a wholesale dealer in margarine or margarine-cheese is carried on. Not only must the premises be registered, but every occupier of such manufactory and every wholesale dealer in such substances must keep a register showing how much has been sent out, and to whom it has been sent. This register is open to the inspection of an officer of the Board of Agriculture. Failure to keep a register, or neglect in keeping it posted up to date, entails heavy penalties.

The absence of any definition of either a manufacturer or a wholesale dealer renders it somewhat difficult to define the limits of this section. It might be said that any person, either a retail trader or a wholesale dealer, What is meant by "manufacturer" or "wholesale dealer".

who has a mixing machine on his premises and uses it for the purpose of blending margarine and butter, would be a "manufacturer" within the meaning of this section, and would have to register his premises and keep a register of every parcel sent out.

Wholesale
and retail.

In regard to cases where the business carried on is of a mixed character, being both wholesale and retail, it may be taken for granted (although the Act is silent on the point and might be strictly construed otherwise) that whilst the premises must be registered, only parcels sold "wholesale," *i.e.*, for sale again, need be entered in the register.

Retail.

Where a person carrying on a retail trade makes sales of margarine or margarine-cheese, even in small quantities, to other traders for sale again, he must register his premises and keep a register of such transactions.

In dealing with the provisions of the whole of this section it is necessary to look to the intention of the Act, and with this in view the principle may be laid down that the keeping of a register can only be dispensed with in the case of sales made direct to the consumer.

SECTION 8.

Restriction on
amount of
butter fat
in margarine.

Margarine must not contain more than 10 per cent. of butter fat. To import, manufacture, sell, or expose for sale margarine containing more than that percentage constitutes an offence under the Margarine Act, 1887. This does not apply to margarine manufactured or imported in fulfilment of any contract made before 20th July, 1899. This section practically makes it an offence to blend butter or cream with margarine at all, as owing to the fact that margarine itself, as an article of com-

merce, contains a certain proportion of butter fat, the margin left for addition either by the wholesale dealer or by the retail trader is so small that to add any proportion of butter or cream would involve considerable risk.

A defence to a prosecution is provided under Section 7 of the Margarine Act, 1887, but that only has reference to cases where the article was bought as *butter* under a written warranty. It follows, therefore, that Section 7 of the Margarine Act, 1887, would be no defence where the article was bought as *margarine* and there was a written warranty that it did not contain more than 10 per cent. of butter fat. It is not altogether clear whether in such case the defendant would be debarred from pleading the written warranty under Section 25 of the Act of 1875 and Section 12 of the Margarine Act, 1887. In the absence of a written warranty the defendant, on conviction, would have his remedy for breach of contract, etc., under Section 28 of the Act of 1875.

SECTION 9.

Every person selling milk or cream in any highway or public place must have his name and address conspicuously inscribed on his cart or cans.

Selling
milk or
cream in
public
place.

SECTION 11.

Every tin containing condensed skimmed milk must be labelled in large type "skimmed milk".

Condensed
milk.

Every tin containing condensed separated milk must be labelled in large type "machine-skimmed milk".

The label must be clearly visible to the purchaser.

The question at once arises whether such tins duly labelled may be sold in plain wrappers. The opinion

has been expressed by the High Court that margarine should not be sold in that way ; but, on the other hand, it has been held that packet cocoa, labelled as a mixture, may be sold in a plain opaque wrapper, where there is no evidence of intent to deceive. On the whole the probability is that the principle laid down in this latter case will be followed, but retail traders who wish to make their position secure will either remove the wrapper when delivering, or give verbal notice of the contents of the tin.

SECTION 12.

Notice of mixtures.

The Act of 1875 provided that no offence was committed by the sale of a mixed article not injurious to health and not mixed fraudulently, so long as the purchaser had notice by label distinctly and legibly written or printed. Unlike the provisions relating to margarine or margarine-cheese there may be other printed matter on the label, but the Act of 1899 provides that the notice must not be obscured by such other matter. This latter provision, however, does not affect Registered Trade Marks, or labels continuously in use for at least seven years before 1st January, 1900.

SECTION 14.

Samples in course of delivery.

The power to take samples of milk in course of delivery has now been extended to all other articles of food in course of delivery, when the purchaser consents or requests that it shall be done. Inspectors will now be able to obtain samples of articles delivered at the house of a retail trader's customer, when the consent of such customer has been given. Retail traders will also

be able to take advantage of this section to check the quality of the articles delivered by wholesale dealers. The request or consent of the purchaser or consignee is not necessary in the case of milk in course of delivery.

SECTION 16.

In addition to the penalties incurred under the Act of 1875 for refusing to sell to an officer, any person ^{Bribery or obstruction.} who wilfully obstructs or impedes an officer, or who by bribery prevents or attempts to prevent the execution of the Acts, will render himself liable to heavy penalties.

SECTION 17.

Persons guilty of an offence under the Act of 1875 ^{Penalties.} entailing a maximum fine of £20 are now liable for a second offence to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100. This has reference to the following sections of the Act of 1875, viz :—

Section 6. Sale of articles of food or of drugs not of the proper nature, substance and quality, to the prejudice of purchaser.

Section 7. Sale of compounded articles of food or drugs not composed of ingredients in accordance with the demand of the purchaser.

Section 9. Injurious abstracting any part of an article of food with intent to sell without notice. Also selling the altered article without notice.

Section 27. Wilfully applying a warranty to any other article than that for which it was given. Wilfully giving a false label. For giving a false warranty Section 20 (6) of the Act, 1899, inflicts similar penalties.

Imprisonment.

Where, under any of the Acts, a person guilty of an offence is liable to a fine exceeding £50, and the offence in the opinion of the Court was committed by the personal act, default, or culpable negligence of the person accused, that person is liable (if the Court is of opinion that a fine will not meet the circumstances of the case) to imprisonment with or without hard labour, for a period not exceeding three months. This has reference to the sections enumerated in the preceding paragraph, and to offences under the Margarine Act, 1887, and also to third offences under the Act of 1899, Sections 1, 8, 16, 20 (6). In view of the fact that the Courts have decided that an innocent seller is liable for the unauthorised acts of his servant, it follows that although the two previous convictions may have been brought about by the unauthorised act of his servant, yet in certain circumstances he may be liable to imprisonment without the option of a fine. It can only take place, however, when the Court is of opinion that the third offence was committed by the personal act, default, or culpable negligence of the accused.

SECTION 18.

Tins or packets.

A trader is not bound to sell part of the contents of an unopened tin or package duly labelled, and it would be no obstruction to refuse to sell otherwise than in the unopened tin or package.

SECTION 19.

Proceedings:
time limit.

Proceedings must be taken within twenty-eight days from the time of purchase, when any article of food or drug has been obtained for the purpose of analysis.

Formerly this was confined to perishable articles, but the operation of the Act has now been extended to any article obtained for analysis. Where the article of food or drug has been obtained by a private purchaser not for analysis, and it is afterwards ascertained that an offence against the Acts has been committed, proceedings may be instituted within six months as provided by the Summary Jurisdiction Acts.

In prosecutions for giving a false warranty, proceedings must be taken within a reasonable time, but not necessarily within twenty-eight days.

In any prosecution the summons must state particulars of the offence and the name of the prosecutor.

A copy of the analyst's certificate relied on by the prosecution must accompany the summons. By this means the defendant will be fully informed of the nature of the charge, so that no time need be wasted in obtaining rebutting evidence.

Summons must state particulars and be accompanied by copy of analyst's certificate.

SECTION 20.

Although the Act of 1899 deals with the question of warranty or invoice, it cannot be said that an invoice can now be pleaded in defence of any prosecution to any greater extent than formerly, the effect being mainly to impose new conditions on the person desirous of setting up such a form of defence. In certain circumstances an invoice is a good defence to a prosecution under the Act of 1875, but only where the nature of the invoice is such as to practically make it a written warranty within the requirements of the Acts. In prosecutions under the Margarine Act of 1887 either a warranty or an invoice can be pleaded. The Act of 1899 leaves matters exactly where they were in this respect.

Warranty or invoice.

The following are the new conditions :—

Copy to
be sent to
prosecutor
within
seven days
of sum-
mons.

1. The defendant must send to the purchaser, within seven days after being summoned, a copy of any warranty or invoice upon which he intends to rely, and must notify the person from whom he has received it that he intends to shelter himself under it.

Warrantor
may appear
and give
evidence.

2. The person giving the warranty or invoice has the right to appear and give evidence, but there is no obligation laid upon him to do so.

Warranty
by person
outside
United
Kingdom.

3. In regard to a warranty or invoice given by a person living outside the United Kingdom, the defendant must, in addition to the requirements of the Acts, prove that he took reasonable steps to ascertain that the statements contained in the warranty or invoice were accurate.

Servant
can plead
warranty.

4. A servant can now plead a warranty or invoice in defence in the same way as his master. This provision has been inserted owing to a decision of the High Court in 1891 to the contrary.

False
warranty.

6. In a prosecution under the Act of 1875 for giving a false warranty, it was held that the prosecution must prove that the defendant knew or had reason to believe that the warranty was false. This decision excited considerable comment at the time, and as a result the Act of 1899 throws upon the defendant the onus of proof that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true.

SECTION 21.

Duty of
Court to
send article
for analy-
sis.

A useful alteration has been effected by this section. Instead of it being entirely at the discretion of the Court as to whether the sample should be sent to the Commissioners of Inland Revenue for independent analysis, it is

now provided that the Court is bound to do so on the request of either party. In the absence of any request the Court has discretionary powers.

SECTION 22.

The provisions of the Act of 1875, Section 21, have now been extended to a defendant, so that the production by a defendant of a certificate of a public analyst shall be sufficient evidence, unless the prosecutor requires that the analyst be called as a witness. Analyst's certificate evidence for defence.

A copy of the analyst's certificate in such case must be sent to the prosecutor at least three clear days before the hearing. Under Section 19 of the Act of 1899 already noted, the prosecutor must serve upon the defendant a copy of the certificate with the summons. Copy of certificate to be sent to prosecutor.

SECTION 26.

Owing to the restricted interpretation which the Courts "Food." placed on the wording of the Act of 1875, the definition of food has now been enlarged so as to be as wide as possible in its application. It embraces every article used for food or drink by man, other than drugs or water, or any article which ordinarily enters into the preparation of human food, and it also includes flavouring matters and condiments. Baking powders and such like, sauces, pickles, etc., come within the category, and if on analysis they are shown to be injurious to health, or deficient in quality, etc., the seller is liable to prosecution.

**SALE OF FOOD AND DRUGS ACTS,
1875-1899.**

SALE OF FOOD AND DRUGS ACTS, 1875-1899.

DEFINITIONS.

For the purposes of the Sale of Food and Drugs Acts, the expression "food" shall ^{Food. F. & D. Act, 1899, s. 26.} include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food ; and shall also include flavouring matters and condiments.

The foregoing definition is sufficiently comprehensive to include baking powder, which, owing to the wording of the definition in the Act of 1875, was not considered to be an article of food.¹

Chewing gum.—Defendant sold chewing gum in packets labelled "Barratt Co.'s Chewing," "This must not be eaten," "For chewing only". The article contained 8·3 per cent. of paraffin wax, which was an essential ingredient in a chewing substance, but which, if swallowed, would be injurious to health. On an appeal against two convictions under Sections 3 and 6 of the Act, 1875, the

¹ James v. Jones, 1894.

Court held that, on the case stated, the convictions must be quashed, but that it by no means followed that facts could not be stated in regard to this particular article which would bring the sale of it within the purview of the Statute.¹

Butter.
Margarine
Act, 1887,
s. 3.

The word "butter" shall mean the substance usually known as butter made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

Margarine.
Margarine
Act, 1887,
s. 3.

The word "margarine" shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not, and no such substance shall be lawfully sold except under the name of margarine.

Cheese.
F. & D. Act,
1899, s. 25.

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk.

Margarine-
cheese.
F. & D. Act,
1899, s. 25.

The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk.

Drug.
F. & D. Act,
1875, s. 2.

The term "drug" shall include medicine for internal or external use.

A grocer sold $\frac{1}{4}$ lb. of beeswax, stating at the time that he could not guarantee it as pure. The beeswax was

¹ Bennet v. Tyler, 1900.

found to contain 50 parts of paraffin wax. *Held*, affirming decision of justices, that, under the circumstances, beeswax was not a drug within the meaning of the definition.¹

On an appeal to the Divisional Court there was a difference of opinion as to whether an article sold as "arsenical soap," but containing no arsenic, was a drug or not. Hawkins, J., delivering the judgment of the Court, held that it was not a drug. Wright, J., considered, however, that the seller could have been proceeded against for selling a compounded drug not composed of ingredients in accordance with the demand of the purchaser.²

Tea to which the term "exhausted" is applied shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Exhausted
tea.
F. & D. Act,
1875, s. 31.

For the purposes of the Sale of Food and Drugs Acts, the word "importer" shall include any person who, whether as owner, consignor or consignee, agent or broker, is in possession of, or in any wise entitled to, the custody or control of the article.

Importer.
F. & D. Act,
1899, s. 1(2).

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts.

Local Au-
thority.
F. & D. Act,
1899, s. 25.

¹ *Fowle v. Fowle*, 1896.

² *Houghton v. Taplin*, 1896.

Public
analyst.
F. & D. Act,
1899, s. 25.

The expression "public analyst" means an analyst appointed by any local authority authorised to appoint for the purposes of the Sale of Food and Drugs Acts.

County.
F. & D. Act,
1875, s. 2.

The term "county" shall include every county, riding, or division, as well as every county of a city or town not being a borough.

F. & D. Act,
1879, s. 7.

Every liberty having a separate Court of Quarter Sessions, except a liberty of a cinque port, shall be deemed to be a county.

F. & D. Act,
1875, s. 32.

Every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

Justices.
F. & D. Act,
1875, s. 2.

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England and any divisional justices in Ireland.

MIXING INJURIOUS INGREDIENTS.

Food :
mixing in-
jurious
ingredients
and selling
same.
F. & D. Act,
1875, s. 3.

No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with

intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained or powdered. (See *Penalties*, page 100.)

Defendant can plead absence of knowledge. (See *Food and Drugs Act*, 1875, s. 5, page 22.)

The defendant, however, cannot plead warranty.¹ (See page 51.)

To obtain a conviction under this section, it is necessary to prove that the article resulting from the mixing is injurious to health.

There are two separate and distinct offences in this section: (1) The mixing or causing to be mixed any article of food with any ingredient, rendering such article injurious to health. (2) The actual selling of an article of food so mixed.

Where on analysis a 1 lb. bottle of peas was found to contain 3 grains of sulphate of copper (equal to $\frac{8}{10}$ of a grain of metallic copper), inserted by the manufacturers for the purpose of preserving, fixing, or of restoring the natural colour of the peas, it was held that the article was thereby rendered injurious to health within the meaning of this section.²

There is no fixed regulation at present defining the percentage of borax and kindred preservatives which may be used in connection with articles of food. As a consequence, there are many conflicting decisions as to what percentage may or may not be considered to be injurious to health. By Section 4 of the Act of 1899 the Board of Agriculture has the power to make regulations determining what addition of preservatives or

¹ *Elliot v. Pilcher*, 1901.

² *Summers v. Grist*, 1896.

colouring matter in milk, cream, butter or cheese shall be considered injurious to health. A Departmental Committee has been appointed and evidence has been taken on the subject.

Drugs :
mixing of
drugs with
injurious
ingredients
and selling
the same.
F. & D. Act,
1875, s. 4.

No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain or powder, or order or permit any other person to mix, colour, stain or powder, any drug with any ingredient or material, so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained or powdered. (See *Penalties*, page 100.)

All that it is necessary to prove is that the mixing has resulted in a depreciation of the quality or potency of the drug. It differs, therefore, from the preceding section in that proof of injury to health is not essential. Defendant can plead absence of knowledge (see next section), but cannot plead warranty.¹

Defence :
absence of
know-
ledge.
F. & D. Act,
1875, s. 5.

Provided that no person shall be liable to be convicted under either of Sections 3 and 4 (*i.e.*, for mixing any article of food with injurious ingredients and selling same, or for mixing drugs with injurious ingredients and selling same) if he shows to the satisfaction of the justice or Court before whom he is

¹ Elliot v. Pilcher, 1901.

SALE TO THE PREJUDICE OF THE PURCHASER. 23

charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained or powdered as mentioned in either of Sections 3 and 4, and that he could not with reasonable diligence have obtained that knowledge.

The effect of this section is that the burden lies upon the defendant to prove two things: first, that there was no guilty knowledge or intent on his part, and secondly, that by no reasonable diligence could he have discovered that the article of food or drug had been so mixed, coloured, stained or powdered.

If it is proved that the article resulting from the mixing is injurious to health, the seller would not be protected by having sold it with a descriptive label.

SALE TO THE PREJUDICE OF THE PURCHASER.

No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser,

F. & D. Act,
1875, s. 6.
Sale of
food or
drugs not
of proper
nature,
substance,
or quality.
F. & D. Act,
1879, s. 2.

It shall be no defence to any prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance,

or in quality, was not defective in all three respects. (See *Penalties*, page 101.)

Notice to
purchaser.

A person selling a mixed article is protected by giving notice to the purchaser in accordance with Section 8 of the Act of 1875. This, however, is subject to certain limitations. (See pages 32-36.)

An inspector asked A, a shopkeeper, for $\frac{1}{2}$ lb. of coffee, and was informed by A that he did not sell it. The inspector then pointed to tins labelled "coffee and chicory". A said that those were sold as a mixture. The inspector bought $\frac{1}{2}$ lb., and on analysis the mixture was found to contain 30 per cent. of coffee. A was charged with selling coffee not of the nature, substance and quality of coffee. *Held*, that A having sold the article as a mixture, and having given notice when the sale was made, no offence was committed.¹

Absence of
know-
ledge is no
defence.

It is no defence for the seller to show that he did not know that the article sold was not of the nature, substance and quality demanded.²

Arsenic in
beer.

The fact that a seller can plead absence of knowledge in defence to a prosecution under Section 3, for selling an article mixed with ingredients injurious to health, has led to proceedings being taken under Section 6, for selling to the prejudice of the purchaser an article not of the nature, substance and quality demanded. Some doubt existed as to whether proceedings could properly be taken under Section 6 in a case of this kind. On appeal, however, the Divisional Court has decided in the affirmative.³

A retailer sold beer with which a certain quantity of arsenic injurious to health had been mixed in the process

¹ *Higgins v. Hall*, 1886.

² *Betts v. Armstead*, 1888.

³ *Goulder v. Rook*, 1901.

SALE TO THE PREJUDICE OF THE PURCHASER. 25

of manufacture. The retailer was ignorant of the fact that there was arsenic in the beer. Proceedings having been taken under Section 6, for selling an article not of the nature, substance and quality, it was shown that the quantity of arsenic in the beer was such as to render it injurious to health, and also that arsenic does not form one of the constituents of beer. The Court thereupon held that there was evidence upon which the magistrate could find as a fact that the beer was not of the nature, substance or quality of the article demanded, and that the retailer could therefore be convicted under Section 6.¹

Although an article may not be adulterated, yet if it differs wholly from that demanded by the purchaser it will come within the meaning of the section.²

Application not limited to adulterated articles.
Liability of innocent vendor for adulteration in transit.

When the article of food or drug is to be delivered at a distance, say by rail, it is no defence to prove that it left the seller's premises in a pure and unadulterated condition, if on reaching its destination it is found to be adulterated.³

A false representation as to the nature, substance and quality of the article, made some time prior to the sale, does not constitute an offence, provided that at the time the sale actually takes place a true representation is made.⁴

Representation as to quality.

A servant of a company who, acting as such, sells an adulterated article of food, or a drug, will be held to be the seller within the meaning of the section.⁵ But a servant can now shelter himself under written warranty, if there be one, provided he proves that he had no reason

Sale by a servant.

¹ Bent v. Omerod, 1901.

² Knight v. Bowers, 1885.

³ Parker v. Alder, 1899.

⁴ Kirk v. Coates, 1886.

⁵ Hotchin v. Hindmarsh, 1891.

to believe that the article was otherwise than that demanded.

Servant
acting
against
instruc-
tions.

It has been clearly decided that an innocent seller is liable for the unauthorised acts of his servant.¹

A servant was employed to sell milk by retail. The employer had published a warning that a servant would be liable to instant dismissal if the milk in his can did not correspond with the sample which the employer used to take from each can daily, and which was kept for reference. An inspector took a sample from the servant's can in course of delivery and the milk was found to be adulterated. The servant admitted having watered the milk, and the sample kept by the employer was found to be unadulterated.

Held, that the employer was responsible. That it was not necessary for the prosecution to prove connivance on the part of the employer to secure a conviction, but that evidence might be admitted to show that the servant acted against the employer's direction, with a view to mitigating the penalty.²

This decision is opposed to the ruling in *Kearley v. Tyler* (1891), where it was held that a master is not liable for the criminal offence of his servant. But the principle of the liability of an innocent vendor as laid down in *Brown v. Foot* has been followed in the case of *Farley v. Higginbotham* (1898), where a proprietor of a shop was held liable for the act of his manager in obstructing an officer in the discharge of his duty. (See also *Parker v. Alder*, above.)

It has been held that where the purchaser has asked

¹ Per Lord Russell, C. J. (*Parker v. Alder*, 1899).

² *Brown v. Foot*, 1892.

for "milk" and has been supplied with skimmed milk, no offence has been committed under this section¹ (Section 6 of the Act of 1875), but it is open to question whether it would not be an offence under Section 9 (page 36).

On the other hand a sale to an inspector of a pint of skimmed milk for one penny, when new milk was demanded, was held to be an offence within the section. As to whether the inspector expected to get a pint of new milk for one penny was considered to be immaterial.²

Sale to the assistant of an inspector acting under the Acts has been held to be to the prejudice of the inspector.³

EXCEPTIONS TO SECTION 6 (1875).

No offence is committed under Section 6 :—

1. Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a fit state for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or to conceal the inferior quality thereof.

Exceptions to s. 6 (1875).
Harmless and necessary additions.
F. & D. Act, 1875, s. 6(1).

It is a question of fact for the magistrate to decide whether the addition to the article has been made with fraudulent intent.⁴ The seller is not protected by a

Fraudulent intent.

¹ Lane v. Collins, 1884.

² Heywood v. Whitehead, 1897.

³ Garforth v. Esam, 1892.

⁴ Pashler v. Stevenitt, 1876; Webb v. Knight, 1877.

label if it be held that the addition has been fraudulently made.¹

It has been held that to put glucose into marmalade as an alternative to cane or beet sugar does not necessarily constitute an offence, where it cannot be shown that it was put in for the purpose of fraudulently increasing the bulk, weight or measure, or of concealing its inferior quality.²

No offence is committed under Section 6 :—

Proprietary medicines or patents.
F. & D. Act,
1875, s. 6(2).

2. Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent.

No offence is committed under Section 6 :—

Compounded food and drugs.
F. & D. Act,
1875, s. 6(3).

3. Where the food or drug is compounded as mentioned in the Sale of Food and Drugs Acts.

It is probable that when the Bill was originally drafted it contained a definition of the expression "compounded food or drug" and that the defining clause subsequently dropped out, while, by an oversight, the exemption was allowed to remain. The result is that the absence of any description or definition of compounded food or drug in any of the Acts renders the exemption useless.³

From decided cases it is clear that when any compounded drug is sold according to its name appearing in the *British Pharmacopæia*, it must be according to the formula therein mentioned. It has been suggested that a chemist desirous of selling a drug of a lower standard

¹ Liddiard v. Reeves, 1878. ² Smith v. Wisden and others, 1901.

³ Beardsley v. Walton & Co., 1900.

than that prescribed by the *British Pharmacopæia* might protect himself by selling the article as a diluted drug. It is doubtful, however, whether this would relieve the seller of liability, as Section 15 of the Pharmacy Act of 1868 provides that "any person who shall compound any medicine of the *British Pharmacopæia* except according to the formularies of the said *Pharmacopæia*" shall be guilty of an offence and liable to a penalty.

It has been held that the fact of an article being a compounded drug does not make the sale of it, when adulterated, any less an offence within Section 6 of the Act of 1875.¹

In prosecution under Section 6 of the Act of 1875, for selling camphorated oil deficient to the extent of 12 parts per cent. by weight of camphor, "to the prejudice of the purchaser," it was held that camphorated oil (a compounded drug) did not come within exemption No. 3, and the seller must therefore be convicted.²

No offence is committed under Section 6 :—

4. Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Unavoidable mixing.
F. & D.
Act, 1875,
s. 6 (4).

This sub-section, therefore, cannot be pleaded as a defence in a prosecution under Section 6 of the Act of 1875 for selling beer containing arsenic.

As to whether a prosecution can properly be instituted under Section 6, see page 24.

The fact that butter, on analysis, is found to contain as much as 21½ per cent. of water is not sufficient of itself to obtain a conviction. It must be shown that

Arsenic in beer.

Water in butter.

¹ *Dickins v. Randerson*, 1901.

² *Beardsley v. Walton & Co.*, 1900.

the water added is not unavoidably mixed with or added to the butter, and also that it does not come within the exception No. 1 (page 27), relating to harmless, necessary and non-fraudulent additions.¹

An ingenious attempt has recently been made to introduce an excess of moisture into butter by blending it with milk after the butter has been manufactured. Proceedings were instituted under Section 6 for selling to the prejudice of the purchaser an article of food not of the nature, substance and quality demanded. It was urged in defence that no offence was committed, as "butter" is defined by the Acts as being made exclusively from milk or cream, or both. The Court held, however, that the addition of milk was made fraudulently, and that an offence had been committed under the Section.²

In a case of this kind a label or notice to the purchaser does not protect the seller if the magistrate finds that the addition has been made in order to fraudulently increase the bulk, weight or measure of the article. This is a question of fact which the magistrate must decide.³

No offence is committed under Section 6 :—

Sale of
spirits.
F. & D. Act,
1879, s. 6.

5. Where in the sale of spirits, not adulterated otherwise than by the admixture of water, it is proved that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky or rum, or thirty-five degrees under proof for gin.

Notice by
placard.

Where seller brings to the knowledge of purchaser the fact that he sells diluted spirits, and does not guarantee

¹ Bosomworth v. Bridge, 1892.

² Pearks v. Knight, 1901.

³ Liddiard v. Reeves, 1878.

the alcoholic strength, such sale is not to the prejudice of purchaser, and does not constitute an offence, even though the spirit has been reduced to more than twenty-five degrees under proof in the case of brandy, whisky or rum, or to more than thirty-five degrees under proof in case of gin.¹

Defendant filled a bottle with rum and sold it without a label, but there was a notice conspicuously posted up that "all spirits sold as diluted, no alcoholic strength guaranteed". The rum was slightly below the alcoholic strength required by Section 6 (1879). *Held*, that there was sufficient notification to satisfy the requirements of Section 8 (1875), and that it is a question of fact for the magistrates to decide whether or not the purchaser was prejudiced.²

But where rum was sold, without label, mixed with 72·86 water, and it was admitted that the water had been added to increase the quantity, but there was a notice in the bar-room, "Diluted—no alcoholic strength guaranteed," it was held that the mere fact of there being a notice was not sufficient, and the justices must find whether or not the purchaser was prejudiced.³

T. went into a public-house, and without going into the bar or kitchen (where there were notices that "all spirits are sold diluted") he went into a club-room where there was no notice, and asked for whisky, which was supplied 37 degrees under proof. *Held*, that although T. did not see the notices, the justices ought to have inquired, before deciding, whether T. knew that it was the practice at this house to sell diluted spirits. If so, then no conviction was proper.⁴

¹ Gage v. Elsey, 1883.

² Palmer v. Tyler, 1897.

³ Jones v. Thomas, 1896.

⁴ Morris v. Johnstone, 1890.

Com-
pounded
articles of
food and
com-
pounded
drugs.
F. & D. Act,
1875, s. 7.

No person shall sell any compounded article of food or compounded drug which is not composed of ingredients in accordance with the demands of the purchaser. (See *Penalties*, page 101.)

Drug
standard.

Where a particular drug is asked for, the standard prescribed by the *British Pharmacopæia* shall determine whether it is deficient or not.¹

Query (per Wright, J.): Whether an article sold as arsenical soap, but containing no arsenic, would not come within the meaning of this section.²

In a prosecution for selling as "Mercury Ointment" an ointment containing a less proportion of mercury than that prescribed by the *British Pharmacopæia*, it was held that the purchaser must be deemed to have demanded the drug according to the prescription appearing in the *British Pharmacopæia*, and that therefore the seller must be convicted.³ (See also page 28.)

NOTICE TO PURCHASER.

Protection
by giving
label.
F. & D. Act,
1875, s. 8.

Provided that no person shall be guilty of any offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same

¹ *White v. Bywater*, 1887. ² *Houghton v. Taplin*, 1896.

³ *Dickins v. Randerson*, 1901.

a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

The label shall not be deemed to be distinctly and legibly written or printed unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label.

Provided that nothing shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before first day of January, 1900. But the Comptroller-General of Patents, Designs and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment.

It is a question of fact for the magistrates to decide whether the addition has been made with fraudulent intent. The magistrate is bound to find whether the addition has been made with fraudulent intent or not, notwithstanding notification by label.¹

Unlike the provisions of Section 6 of the Act of 1899, dealing with margarine, or margarine - cheese, printed matter other than the notice of mixture may appear on the label, provided that the notice is not thereby obscured.

When the packet duly labelled as containing a mixture

¹ *Horder v. Meddings*, 1880.

was wrapped in a plain opaque paper it was held that the label was sufficient, in the absence of evidence of fraud.¹

Label. Notification by label is sufficient even though the print be small.²

Label need not state proportions.—Purchaser asked for “French Coffee” and received a tin labelled as containing a mixture of coffee and chicory, and was also informed that it was a mixture. There was 40 per cent. of coffee and 60 per cent. of chicory. *Held*, that the absence of any statement of the proportions did not show fraudulent intent.³

When the justices found that 60 per cent. of chicory had been added with intent fraudulently to increase the bulk, weight and measure of the coffee, the fact that there was a label on the outside of the package giving notice of the mixture did not protect the seller from being convicted.⁴

Notice by placard. An offence is not necessarily committed in every case where a label does not accompany the article or drug. For instance, where the seller by means of a notice posted up brings to the knowledge of the purchaser the fact that the article sold to him is not of the nature, substance or quality of the article he demands, such notification is sufficient.⁵ (See also cases quoted under Section 6, *Notice by placard*, viz., *Gage v. Elsey*, *Palmer v. Tyler*, *Jones v. Thomas*, *Morris v. Johnstone*, pages 30, 31.)

It is, however, important to remember that a notice or label is no defence where the mixing is held to be done with fraudulent intent to increase the bulk, weight or measure of the article, or conceal its inferior quality.

¹ *Jones v. Jones*, 1894.

² *Attfield v. Tyler*, 1893.

³ *Otter v. Edgley*, 1893.

⁴ *Liddiard v. Reeves*, 1878.

⁵ *Sandys v. Small*, 1878.

There are special provisions in regard to the sale of margarine and margarine-cheese, and a general notice posted up would not be held to satisfy all the requirements of the Margarine Act of 1887. (See pages 41-45.)

Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser on which the words "machine-skimmed milk," or "skimmed milk," as the case may require, are printed in large and legible type, and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section he shall be guilty of an offence. (See *Penalties*, page 103.)

Condensed
separated
or skimmed
milk.
F. & D. Act,
1899, s. 11,

When properly labelled tins are covered with a plain outside wrapper, it is open to question whether the notice can be said to be "clearly visible" to the purchaser. In the case of packet cocoa, however, it has been held that, evidence of fraud being absent, the label satisfied the requirements of the Acts although covered by a plain outside wrapper.¹ This ruling will probably be followed in cases arising under this section.

It has been held that a label in small print on a tin of condensed milk to the effect that the tin contains *skimmed* milk was sufficient disclosure within the section.²

But where a similar statement appeared on a tin containing *separated* milk, it was held that the label did not give proper and sufficient notice of the alteration, but should have stated that the tin contained separated milk, there being a great difference in the proportion of cream contained in skimmed and separated milk.³

¹ *Jones v. Jones*, 1894.

² *Jones v. Davies*, 1893; *Platt v. Tyler*, 1894; *Wright v. Tyler*, 1894.

³ *Petchey v. Taylor*, 1898.

Abstract-
ing part of
article of
food and
selling
without
notice.
F. & D. Act,
1875, s. 9.

No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance or nature, and no person shall sell any article so altered without making disclosure of the alteration. (See *Penalties*, page 101.)

Warranty cannot be pleaded in defence to a prosecution under this section.¹

Innocent
vendor
liable.

It is not necessary to show guilty intent on the part of the seller, for this section has been held to apply irrespective of the intention with which the alteration is made.² For instance, a person selling milk by retail in such a manner that late customers got milk deficient in quality was held to be guilty of an offence.³

The servant of C., a dairyman, being short in his supply of milk, bought two gallons from another dairyman and mixed it with his own. It was found on analysis to be deficient in quality. *Held*, that it was no defence for C. to show that neither he nor his servant knew or had reason to suspect that the milk was deficient.⁴

There is, however, a Scotch case in which the facts were very similar, and in which the Court held that, in the circumstances, the dairyman had not committed an offence.⁵

Absence
of know-
ledge no
defence.

It is no defence for the seller to prove that he did not know of the alteration at the time he made the sale.⁶

¹ *Elliot v. Pilcher*, 1901.

² *Spiers & Pond, Ltd. v. Bennett*, 1896.

³ *Dyke v. Gower*, 1892.

⁴ *Morris v. Corbett*, 1892.

⁵ *Frew v. Gunning*, 1901.

⁶ *Pain v. Boughtwood*, 1890.

RESTRICTION OF AMOUNT OF BUTTER FAT
IN MARGARINE.

It shall be unlawful to manufacture, sell, expose for sale or import any margarine the fat of which contains more than 10 per cent. of butter fat, and every person who manufactures, sells, exposes for sale or imports any margarine which contains more than that percentage shall be guilty of an offence under the Margarine Act, 1887, . . . unless he shows to the satisfaction of the Court before whom he is charged, that he purchased the article in question as butter and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter, and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely on the above defence. (See *Written Warranty*, page 51 ; *Penalties*, page 102.)

Restriction
of amount
of butter
fat in mar-
garine.
F. & D. Act,
1899, s. 8.

Margarine
Act, 1887,
s. 7.

Wholesale and retail traders must not assume that they can add 10 per cent. of butter or cream to all margarine bought by them. Margarine of itself contains

a certain percentage of butter fat, and if it is intended to mix butter or cream with it the percentage of butter fat already in the margarine should be carefully ascertained, so as not to exceed the 10 per cent. limit.

The defence which can be set up under this section is that provided by Section 7 of the Margarine Act of 1887, whereby the defendant has to show that he bought the article as *butter* with a written warranty or invoice to that effect. But the section provides no remedy where the defendant shows that he bought the article as *margarine* with a written warranty or invoice as to the percentage of butter fat contained in the margarine, and where the margarine proves on analysis to contain more than 10 per cent. of butter fat.

To manufacture, sell, etc., margarine containing more than 10 per cent. of butter fat constitutes an offence against the Margarine Act, 1887. Having regard to the relation which Section 12 of the latter Act bears to Section 25 of the Act of 1875, it might be argued that a defendant could shelter himself under Section 25 of the Act of 1875 by producing a written warranty to the effect that the margarine is guaranteed to contain less than 10 per cent. of butter fat. The point, however, is by no means free from doubt.

The question might be raised whether margarine-cheese may contain more than 10 per cent. of butter fat. Section 5 of the Act of 1899 places this substance on the same footing as margarine, but the absence of the words "margarine-cheese" from Section 8 would lead one to suppose that there was no intention to limit the amount of butter fat in margarine-cheese.

MARKING.

Imported Articles of Food.

It shall be an offence to import any of the following articles into the United Kingdom insufficiently marked, viz.:—

- (a) *Margarine* or *margarine-cheese*, except in packages conspicuously marked “margarine” or “margarine-cheese,” as the case may require.

Importing agricultural and other produce insufficiently marked.
F. & D. Act, 1899, s. 1(1).

Section 6 of the Margarine Act, 1887, requires the marking to be on the top, bottom and sides in printed capital letters not less than three-quarters of an inch square.

Section 6 (1) of the Act of 1899 requires that the brand or mark shall be on the package itself, and not solely on a label, ticket, or other thing attached thereto. All margarine-cheese sold or dealt in otherwise than by retail shall either be enclosed in packages marked in accordance with the above, or be itself conspicuously branded with the words “margarine-cheese”.

Package itself to be marked.

- (b) *Adulterated* or *impoverished butter* (other than margarine) or *adulterated* or *impoverished milk* or *cream*, except in packages or cans conspicuously marked with a name or description indicating that the butter, or milk, or cream has been so treated.

F. & D. Act, 1899, s. 1(1).

F. & D. Act,
1899, s. 1(1).

(c) *Condensed separated or skimmed milk*, except in tins or other receptacles which bear a label whereon the words "machine-skimmed milk," or "skimmed milk," as the case may require, are printed in large and legible type.

Ibid.

(d) Any adulterated or impoverished article of food to which Her Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated.

(See *Penalties*, page 101.)

Defini-
tion of
importer.
F. & D. Act,
1899, s. 1(2).

The word "importer" shall include any person who, whether as owner, consignor, or consignee, agent or broker, is in possession of, or in anywise entitled to the custody or control of, the article.

Prosecu-
tion by
Customs
authori-
ties.
F. & D. Act,
1899, s. 1(2).

Prosecution for offences under this section shall be undertaken by the Commissioner of Customs; and subject to the provisions of the Food and Drugs Act of 1899, this section shall have effect as if it were part of the Customs Consolidation Act, 1876. (See page 90.)

MARGARINE AND MARGARINE-CHEESE.

Otherwise than by Retail.

Every package, whether open or closed, and containing margarine or margarine-cheese, shall be branded or durably marked "margarine" or "margarine-cheese," as the case may require, on the top, bottom and sides, in printed capital letters not less than three-quarters of an inch square.

Marking of cases.
Margarine Act, 1887, s. 6.

The brand or mark shall be on the package itself, and not solely on a label ticket or other thing attached thereto.

F. & D. Act, 1899, s. 6(1).

All margarine-cheese sold or dealt in otherwise than by retail shall either be enclosed in packages marked as aforesaid, or be itself conspicuously branded with the words "margarine-cheese". (See *Penalties*, page 102.)

Margarine-cheese.
F. & D. Act, 1899, s. 5.

Exposed for Sale by Retail.

And if such margarine or margarine-cheese be exposed for sale by retail, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one and a half

Exposed for sale by retail.
Margarine Act, 1887, s. 6.

inches square "margarine" or "margarine-cheese," as the case may require. (See *Penalties*, page 102.)

A retail dealer was summoned under this section for having exposed for sale by retail margarine without a label attached. The margarine had been placed behind a screen in the ordinary course of business and could not be seen by a purchaser. *Held*, that exposed for sale meant exposed to the view of purchaser, and that therefore no label was necessary in this case.¹ It has since been held, however, that a parcel of margarine or margarine-cheese, when placed in view of the purchaser, but wrapped in paper so that the article itself is invisible to the purchaser, is "exposed for sale" within the meaning of the foregoing.²

In view of this latter case retail dealers will do well to see that all margarine in their shop, whether placed out of sight of purchaser or wrapped in paper or otherwise, is properly labelled in conformity with the requirements of the Act.

If not
labelled
presumed
to be
genuine.
Margarine
Act, 1887,
s. 10.

In the absence of a label, any substance purporting to be butter or cheese is presumed to be exposed for sale as the genuine article.

Sale by Retail.

Selling by
retail.
Margarine
Act, 1887,
s. 6.

And every person selling margarine or margarine-cheese by retail, save in a package duly branded or durably marked as aforesaid, shall

¹ *Crane v. Lawrence*, 1890.

² *Wheat v. Brown*, 1892.

in every case deliver the same to the purchaser in a paper wrapper on which shall be printed, in capital block letters not less than half an inch long and distinctly legible, "margarine" or "margarine-cheese," as the case may require. (See *Penalties*, page 102.)

No other printed matter shall appear on the wrapper. F. & D. Act, 1899, s. 6(2).

Formerly delivery to the purchaser could be made "in or with" a paper wrapper. The words "or with" have been repealed.

The increased size of the lettering and the prohibition of any other printed matter on the wrapper are important alterations effected by the Food and Drugs Act, 1899, s. 6(2).

Where slices of bread spread with a mixture of butter and margarine were sold in a refreshment room for consumption on the premises, and there was a notice posted up that nothing but such mixture was sold in the establishment, it was held that the margarine had not been exposed for sale by retail within the meaning of the section, and therefore did not require to be delivered in a paper wrapper bearing the word "margarine".¹ Sale for consumption on premises with notice is not sale by retail within the Act.

A plain outside wrapper suggests intention to deceive.² Wrapper.

Upon a sale of margarine by retail, the parcel of margarine was delivered to the purchaser in a cardboard box fastened round with a paper band, and the word Outside wrapper not marked.

¹ *Moore v. Pearce's Dining and Refreshment Rooms, Ltd.*, 1895.

² *World's Tea Company v. Gardner*, 1895.

"margarine" in letters of the necessary size was stamped partly on the wrapper and partly on the box. The whole was further wrapped in an outside wrapper of brown paper not having upon it the word "margarine" at all, but it was not clear whether the outside brown paper wrapper had been put on at the request of the purchaser or not. *Held*, that there was sufficient compliance with the requirements of the section.

Per Lord Russell, C.J.: If the outside wrapper had been put on without any request from the purchaser, it might have been some evidence of intent to deceive him.

Per Cave, J.: The wrapper which is required by the Act to have the word "margarine" printed on it in letters of certain size is the outside wrapper in which the margarine is delivered to the purchaser.¹

All traders, therefore, who handle margarine by retail will do well to notice the foregoing case; and, with a view to keeping within the limits imposed by the Act, should see that on the *outside* wrapper appears the word "margarine" in capital block letters not less than half an inch long. No other printed matter may appear on the wrapper—not even the name and address of the seller.

Presump-
tion against
vendor.
Margarine
Act, 1887,
s. 7.

Every person dealing with, selling, exposing or offering for sale, or having in his possession for the purpose of sale, any quantity of margarine or margarine-cheese, contrary to the provisions of the Margarine Act, 1887, shall be liable to a conviction for an offence, unless he shows to the satisfaction of the

¹ *Toler v. Bishop*, 1896.

Court before whom he is charged that he purchased the article in question as butter or cheese, as the case may require, and had a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter or cheese, as the case may require, and that he sold it in the same state as when he purchased it. In such case he shall be discharged from the prosecution. (See *Warranty*, page 51.)

There is an important and appreciable distinction between offering to sell and offering for sale.¹

To *offer to sell*, by means of handbills, margarine under another name does not constitute an offence under this section.

To *offer margarine for sale* would of course render the seller liable unless all the requirements of the Margarine Act were complied with.

MILK.

Condensed Milk.

Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser, on which the words "machine-skimmed milk,"

Tins to be
labelled.
F. & D. Act,
1899, s. 11.

¹ *World's Tea Company v. Gardner*, 1895.

or "skimmed milk," as the case may require, are printed in large and legible type; and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section he shall be guilty of an offence. (See *Penalties*, page 103.)

Milk Sold in the Streets.

Hawking
milk or
cream.
F. & D. Act,
1899, s. 9.

Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address. (See *Penalties*, page 105.)

It is not sufficient for the name and address to be on the cart only, where the cart is left standing, say, at the top of a street, and sales are made from a can carried from door to door. The name and address must be on the can also.¹

REGISTRATION.

Registration
of manufac-
tory of, and
premises of
wholesale
dealer in
margarine
or margarine-
cheese.
Margarine
Act, 1887,
s. 9.
F. & D. Act,
1899, s. 7(4).

*Margarine and Margarine-cheese Manufactory and
Wholesale Dealer's Premises.*

Every manufactory of margarine or margarine-cheese, or any premises wherein the business of a wholesale dealer in margarine

¹ *Crabtree v. Skelton*, 1901.

or margarine-cheese is carried on within the United Kingdom of Great Britain and Ireland shall be registered by the owner or occupier thereof with the local authority from time to time in such manner as Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct, and every such owner or occupier carrying on such manufacture or business in a manufactory or premises not duly registered shall be guilty of an offence. (See *Penalties*, page 102.)

The local authority with whom the owner or occupier is to register means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts. (See *Appointment of Analyst*, page 60.)

The following are the local authorities with whom registration is to be effected:—

City of London.—Public Health Department, Guildhall, E.C.

County of London.—Local Vestries and District Boards.

County.—The County Council.

Boroughs with population 10,000 and over.—The Town Council.

Boroughs with population under 10,000.—The County Council.

The registration of a manufactory or other

F. & D. Act,
1899, s. 7(5).

premises shall be forthwith notified by the local authority to the Board of Agriculture.

Power to enter manufactory and inspect. F. & D. Act, 1899, s. 7(2). Any officer of the Board of Agriculture shall have power to enter at all reasonable times any manufactory of margarine or margarine-cheese, and to inspect any manufacture therein, and to take samples for analysis.

Register to be Kept.

Manufacturers of and wholesale dealers in margarine and margarine-cheese to keep a register. F. & D. Act, 1899, s. 7(1). Every occupier of a manufactory of margarine or margarine-cheese and every wholesale dealer in such substances shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture. (See *Penalties*, page 103.)

Wholesale dealer. There is no definition in the Food and Drugs Acts of the words "wholesale dealer," nor is there any provision for those cases where a wholesale and a retail business is conducted upon the same premises. If a large retailer sells even a small quantity of margarine or margarine-cheese "wholesale" to a smaller retailer, he would come under the category of wholesale dealer and would have to register his place of business as above, and keep a register of the quantity and destination of each parcel.

Retailer to register in some cases.

sold in this way. It is not intended, however, that such large retailer should have to register sales made by retail. The same thing applies in the case of a person carrying on a wholesale and retail business under one roof. It is only necessary to register "wholesale" sales, and the place where the business is carried on. The intention of the Act is to render it possible to trace margarine or margarine-cheese until it reaches the consumer.

Wholesale
and retail.

A wholesale or retail trader, having a mixing machine upon his premises and using it for the purpose of blending butter and margarine, would probably bring himself within the scope of the Act as a manufacturer, and so have to register his premises and also keep a register of all sales. Margarine must not contain more than 10 per cent. of butter fat.

Manufactur-
er.

Any such occupier or dealer is guilty of an offence if he—

- (a) Fails to keep such a register, or
- (b) Refuses to produce the register when required to do so by an officer of the Board of Agriculture, or
- (c) Fails to keep the register posted up to date, or
- (d) Wilfully makes any entry in the register which is false in any particular, or
- (e) Fraudulently omits to enter any particular which ought to be entered in the register. (See *Penalties*, page 103.)

Failure to
keep regis-
ter, false
entry, etc.
F. & D. Act,
1899, s. 7(3).

The following is a suggested form of register of sales of margarine and margarine-cheese :—

Date.	Quantity.				Name.	Address.	Remarks.
	T.	C.	Q.	Lb.			

An officer acting on behalf of a local authority has no power to inspect the register.

EXEMPTION FROM PENALTY.

Master
protected
against un-
authorised
act of his
servant.
Margarine
Act, 1887,
s. 5.

Where an employer is charged with an offence against the Margarine Act, 1887, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that he had used due diligence to enforce the execution of the Act, and that the said other person had committed the offence without his knowledge, consent or connivance, the said other person shall be summarily con-

victed of such offence, and the employer shall be exempt from any penalty.

It should be noticed that this particular defence is confined to prosecutions for offences against the Margarine Act, 1887.

In any prosecution, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision, it shall be incumbent upon him to prove that he is protected by such exception or provision.

Defendant to prove that he is protected by exception or provision. F. & D. Act, 1875, s. 24.

The exceptions referred to in this section are to be found in the Act of 1875, Sections 5, 6, 8 and 25, and in the Act of 1879, Section 6.

WARRANTY.

If the defendant in any prosecution prove to the satisfaction of the justices or Court (1) that he purchased the article in question as the same in nature, substance and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, (2) that he had no reason to believe at the time when he sold it that the article was otherwise, and (3) that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution.

Defendant protected if he prove that he bought the article in the same state as when sold, with a warranty. F. & D. Act, 1875, s. 25.

This section has no application to offences created by Sections 3, 4, and 9 of the Act of 1875.¹ (See pp. 20, 22, 36.)

¹ Elliot v. Pilcher, 1901.

An invoice cannot be pleaded in defence to a prosecution under any of the Acts except the Margarine Act, 1887.

Margarine
and mar-
garine-
cheese
invoice or
warranty.
Margarine
Act, 1887,
s. 7.

Every person dealing with, selling, exposing, or offering for sale, or having in his possession for the purpose of sale, any quantity of margarine or margarine-cheese contrary to the provisions of the Margarine Act, 1887, shall be liable to a conviction for an offence, unless he shows to the satisfaction of the Court before whom he is charged that he purchased the article in question as butter or cheese as the case may require, and had a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter or cheese as the case may require, and that he sold it in the same state as when he purchased it. In such case he shall be discharged from the prosecution.

Either an invoice or a warranty is a defence which can be set up in prosecutions under the Margarine Act, 1887.

The following conditions imposed by the Act of 1899 have reference to the use of a warranty or of an invoice as a defence :—

A warranty or invoice shall not be available as a defence to any proceedings unless the defendant has, within seven days after the service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has sent a like notice of his intention to such person.

Copy of warranty or invoice to be sent to prosecutor with notice. F. & D. Act, 1899, s. 20 (1).

It is therefore a condition precedent to a defence that such notices and particulars be sent. Before the passing of the Act of 1899 there was no obligation to give notice, but if not given the defendant was liable to pay costs.

Notice to purchaser and to warrantor.

The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the Court may, if it thinks fit, adjourn the hearing to enable him to do so.

Warrantor may appear at hearing. F. & D. Act, 1899, s. 20 (2).

In the event of the warrantor choosing to give evidence, and it transpiring that the warranty which he had given was false, this section does not give the Court any power to inflict a penalty. Proceedings for false warranty must be instituted.

Warrantor
outside
United
Kingdom.
F. & D. Act,
1899, s. 20
(3).

A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence unless the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statements contained in the warranty or invoice.

It is a question of fact whether the defendant has taken "reasonable steps" to test the accuracy of the warranty or invoice. It would seem as if an obligation were imposed upon the receiver to obtain analyses from time to time to ascertain whether the goods received from abroad were as warranted.

Servant can
plead war-
ranty.
F. & D. Act,
1899, s. 20
(4).

Where the defendant is a servant of the person who purchased the article under a warranty or invoice, he shall be entitled to rely on the foregoing sections relating to warranty or invoice in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

This sub-section overrides the decision of the High Court in the case of *Hotchin v. Hindmarsh* (1891), in which it was held that the servant—not being the pur-

chaser of the article from the warrantor—could not shelter himself under a warranty.

It is important to notice that in the Act of 1875, Invoice. Section 25 reads, “a written warranty to that effect,” whereas in the Margarine Act, 1887, Section 7, the wording is “a written warranty *or invoice* to that effect”. In prosecutions under Section 25, Food and Drugs Act, 1875, the seller can only plead an invoice as a defence when it is in effect a written warranty, and there is nothing in the Act of 1899 to enlarge the application of the words. Under the Margarine Act, 1887, an invoice is a valid defence. In prosecutions under any of the Acts, however, the person relying on the warranty or invoice must send a copy to the prosecutor within seven days of being summoned, and must also notify the person from whom he has received the warranty or invoice.

Per Pollock, B.: What is required by the Statute Invoice not is a writing expressing on the face of it that it is a sufficient. warranty.

In a prosecution for selling adulterated lard, defendant proved that he sold the substance in the same condition as when he bought it and that it was invoiced to him as “lard”. *Held*, that such invoice did not satisfy the requirements of the Act.¹

A grocer sold ground ginger adulterated with 90 per cent. of exhausted or spent ginger. He had pur- Invoice and label not sufficient. chased it as ground ginger and had received an invoice describing it as such, and each canister was labelled “Warranted Genuine Pure Ground Ginger”. *Held*, that neither the invoice nor the label, together or

¹ *Rook v. Hopley*, 1876.

separately, constituted a warranty sufficient to satisfy Section 25 of the Food and Drugs Act, 1875.¹

Previous to this case it had been decided that there was a sufficient warranty where vinegar was invoiced as "Grimble's Vinegar," and on the cask there was a label on which was printed "Vinegar, Warranted Unadulterated, Grimble & Co., Limited".² It must now, however, be considered as established that there must be some express individual representation in writing by the vendor to the purchaser.

In a prosecution for selling adulterated lard, defendant proved that he bought the lard in a bladder at a wholesale provision merchant's, and on the bladder was printed "Warranted Pure Star Brand". *Held*, that there was not a sufficient warranty, there being no warranty in writing that the article was lard at all, as the description "Pure Star Brand" might mean anything.³

Invoice a warranty under certain conditions.

But it has been held that an invoice of butter, dated the day of the sale and written at the time of the purchase, having upon it the words "Guaranteed Pure Butter," initialled by the vendor, was sufficient evidence of a warranty having been given at the time of the purchase.⁴

Contract for future delivery.

Where, by any contract, the delivery of goods is spread over a period of time, it is advisable that each delivery should be accompanied by a specific warranty.

The decision of the Courts on this point have been very conflicting. In the case of *Harris v. May*, in the year 1884, it was held that a written contract to supply "86 gallons of good and pure milk (each and every day)

¹ *Jiorns v. Van Tromp*, 1895.

² *Lindsay v. Rook*, 1894.

³ *Elder v. Smithson*, 1893.

⁴ *Hawkins v. Williams*, 1895.

for six months" was of no avail unless there was a warranty in writing given with each delivery.¹

This decision was followed in the more recent case of *Robertson v. Harris* (1900), where there was a general warranty to deliver 1,000 gallons of milk weekly, "the milk to be pure new milk". The Court held that there must be some evidence to show that the particular milk which formed the subject of the proceedings was purchased with that warranty.²

On the other hand, where a contract was entered into for "three tons Kilvert's pure lard for delivery to end of January, 1893," and a part of the lard was consigned under the contract, and invoiced as "Kilvert's pure bladdered lard," the Court held that the contract contained a sufficient warranty of the purity of the lard.

Per Charles, J. : The invoice is material, not as itself containing a warranty of purity, but as ear-marking the particular parcel as having been delivered under a contract containing a written warranty.³

This case has been followed by *Elliot v. Pilcher* (1901), which goes even farther, for the Court held that there need not be anything on the warranty to show its connection with the particular delivery, and that it is sufficient to show the connection by evidence. Further, that the statute does not require a specific warranty with each delivery, but merely that the article has been sold with a warranty.⁴

It will thus be seen that the cases of *Harris v. May* and *Robertson v. Harris* are in direct conflict with *Laidlaw v. Wilson* and *Elliot v. Pilcher*. With regard to the latter case, it may be noticed in passing that Mr. Justice Ridley

¹ *Harris v. May*, 1884.

² *Robertson v. Harris*, 1900.

³ *Laidlaw v. Wilson*, 1894.

⁴ *Elliot v. Pilcher*, 1901.

expressed his dissent from the judgment which he himself delivered in *Robertson v. Harris*.

In order to make assurance doubly sure, however, a retailer should insist upon having some form of warranty with each delivery, in addition to the general warranty given at the time of making the contract.

Contract
for future
delivery,
goods
labelled.

The warranty is sufficient where, in a contract to supply milk for a given period, the vendor not only warrants "each and every supply of milk delivered or in course of delivery, or to be delivered under the contract, to be pure, genuine and new milk, unadulterated and with all its cream on," but also *attaches a label to each can*, stating the quantity of "warranted genuine new milk with all its cream on".¹

The distinction between the case of *Farmers & Cleveland Dairy Company, Limited v. Stevenson* and the case of *Jiorns v. Van Tromp*, as above, should be carefully noted. In the one case there was *a written warranty in the contract* that each delivery should be pure, and there was a label attached to each can warranting the purity of contents, whilst in the case of *Jiorns v. Van Tromp*, although the label on the canisters guaranteed the purity of the contents, there was nothing on the invoice which could be considered to be a written warranty to satisfy the requirements of the section.

Burden of
proof on
defendant.

It is not enough for defendant to prove that he bought under a warranty, and that he had no reason to believe that the state of the article had been changed whilst in his possession. The burden is on him to prove that it was sold by him in the same state as when he received it.²

¹ *Farmers & Cleveland Dairy Company, Ltd. v. Stevenson*, 1896.

² *Jones v. Bertram*, 1894.

FALSE WARRANTY.

Any person who shall forge, or shall utter, knowing it to be forged, for the purposes of the Food and Drugs Acts, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour. (See *Penalties*, page 103.)

Forging certificate or warranty. F. & D. Act, 1875, s. 27.

Every person who shall wilfully apply to an article of food or a drug a certificate or warranty given in relation to any other article or drug shall be guilty of an offence. (See *Penalties*, page 103.)

Wilful mis-application of warranty. F. & D. Act, 1875, s. 27.

Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing shall be guilty of an offence, unless he proves to the satisfaction of the Court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true. (See *Penalties*, page 103.)

False warranty. F. & D. Act, 1899, s. 20 (6).

The foregoing section of the Act of 1899 is substituted for Section 27 (3) of the Act of 1875, and throws upon the defendant the onus of proving that he had reason to believe that the statements or descriptions contained in

the written warranty were true. The alteration was considered necessary owing to the decision of the High Court in the case of *Derbyshire v. Houliston* in 1897, in which it was held to be essential that the prosecution should prove that defendant knew or had reason to know that the warranty was false.

False label.
F. & D. Act,
1875, s. 27.

Every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold shall be guilty of an offence. (See *Penalties*, page 104.)

APPOINTMENT OF ANALYST.

By whom
appoint-
ment may
be made.
F. & D. Act,
1875, s. 10.

The appointment of an analyst is made by the following bodies :—

In the City of London and the liberties thereof, the Common Council of the City of London and the liberties thereof,¹ and in all other parts of the metropolis the municipalities acting in execution of the London Government (1899) Act² for the better local management of the metropolis, the county council of every county, and the town council of every borough the population of which is 10,000 or over, having a separate Court of Quarter Sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment.

¹ City of London Sewers Act, 1897, 60 & 61 Vict., cap. 133, s. 7.

² London Government Act, 1899, 62 & 63 Vict., cap. 14.

In the case of a borough, the population of which is under 10,000, the appointment is made by the county council.¹

It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint an analyst.

Duty to appoint.
F. & D. Act,
1899, s. 3(1).

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts.

Definition of Local Authority.
F. & D. Act,
1899, s. 25.

In all cases as and when vacancies in the office occur, or when required to do so by the Local Government Board, such local authorities shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may

Who may be appointed.
F. & D. Act,
1875, s. 10.

Appointment and removal subject to approval of Local Government Board.

¹ Local Government Act, 1888, 51 & 52 Vict., cap. 41.

give their approval absolutely or with modifications as to the period of the appointment and removal or otherwise.

Proof of competency of analyst.
F. & D. Act, 1899, s. 3(5).

Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board.

The regulations as to competency will be found in the Appendix. (See page 167.)

Disqualification.
F. & D. Act, 1875, s. 10.

No person shall be appointed an analyst for any place under the Food and Drugs Acts who shall be engaged in any trade or business connected with the sale of food or drugs in such place.

Definition of public analyst.
F. & D. Act, 1899, s. 25.

The expression "public analyst" means an analyst appointed by any local authority authorised to appoint for the purposes of the Sale of Food and Drugs Acts.

Scotland.
F. & D. Act, 1875, s. 10.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within

their several jurisdictions; provided that one of Her Majesty's Principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

Ireland.
F. & D. Act,
1875, s. 10.

The town council of any borough qualified to appoint may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of the Sale of Food and Drugs Acts.

County or
borough
analyst
may act for
another
borough.
F. & D. Act,
1875, s. 11.

Every analyst appointed under the Sale of Food and Drugs Acts, or any Act repealed thereby, shall report quarterly to the authority appointing him the number of articles

Analyst to
report
quarterly.
F. & D. Act,
1875, s. 19.

Annual
report by
Local Au-
thority to
Local Gov-
ernment
Board.

analysed by him under the Sale of Food and Drugs Acts during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

Remunera-
tion of
analyst.
F. & D. Act,
1875, s. 29.

The salary of the analyst appointed is payable out of the rates.

OBTAINING SAMPLE FOR ANALYSIS.

Duty of
Local Au-
thority to
enforce the
Acts.
F. & D. Act,
1899, s. 3(1).

It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

A duty is thus laid upon the local authorities to carry out the various provisions of the Acts, and in the event of their failing to do so, the Local Government Board or

the Board of Agriculture has power to act and charge the local authority with the expenses. (See page 95.)

The following officials may procure any sample of food or drugs :—

Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of the Sale of Food and Drugs Acts. Officers authorised to procure samples. F. & D. Act, 1875, s. 13.

Any such officer, inspector, or constable may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to the provisions of the Sale of Food and Drugs Acts, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place, to the analyst of another place, and such analyst shall, upon receiving payment as is provided in Section 12 of the Food and Drugs Act, 1875 (page 80), with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis. Sample to be analysed if suspected. F. & D. Act, 1875, s. 13.

An urban district council is not a "local authority" within the meaning of the Sale of Food and Drugs Acts, as it is not authorised to appoint an analyst. (See page 60.) Urban District Council.
It would therefore seem that an officer acting under the

instructions of an urban district council can only act as a private purchaser, and is not one of those authorised under Section 13 of the Act of 1875. As to expenses incurred by the urban district council in enforcing the Acts, see page 111.

Margarine imported or manufactured : sample in course of delivery by public conveyance. Margarine Act, 1887, s. 8.

All margarine or margarine-cheese imported into the United Kingdom of Great Britain and Ireland, and all margarine and margarine-cheese, whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine or margarine-cheese as the case may require; and it shall be lawful for any officer of Her Majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances, or police constable, authorised under Section 13 of the Sale of Food and Drugs Act, 1875 (above), to procure samples for analysis if he shall have reason to believe that the provisions of the Margarine Act, 1887, are infringed on this behalf, to examine and take samples from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against the Margarine Act, 1887, has been committed.

The power to take samples of margarine and margarine-cheese in course of delivery by public conveyance is quite distinct from the power to take samples in course of delivery at the request or with the consent of the purchaser. (*Food and Drugs Act*, 1899, Section 14. See page 68.)

It is not necessary that the officer taking proceedings should have acted personally in the purchase of the sample.¹

An inspector can authorise a constable to act for him in his absence.²

It has been held that a private purchaser has a right to take proceedings for a penalty under the Sale of Food and Drugs Acts, but in such case he should take such steps in regard to notification as the Act requires in the case of the public officers named.³

Any officer of the Board of Agriculture shall have power to enter at all reasonable times any manufactory of margarine and margarine-cheese, and to inspect any process of manufacture therein and to take samples for analysis.

The Local Government Board and the Board of Agriculture may direct an officer of the Board to procure samples of any article of food subject to certain special conditions. (See page 95.)

Power is given to the Commissioners of Customs to take samples of consignments of imported articles of food. (See *Powers of Commissioners of Customs*, page 91.)

¹ *Horder v. Scott*, 1880. ² *Farley v. Higginbotham*, 1898.

³ *Parsons v. Birmingham Dairy Co.*, 1882.

Private purchaser.

Samples from manufactory of margarine or margarine-cheese. F. & D. Act, 1899, s. 7(2).

Local Government Board and Board of Agriculture. F. & D. Act, 1899, s. 2(1). Commissioners of Customs. F. & D. Act, 1899, s. 1(3).

Obtaining
samples in
course of
delivery.
F. & D. Act,
1879, s. 3.
F. & D. Act,
1899, s. 14.

Any such officer, inspector or constable may procure at the place of delivery any sample of any article of food in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such article of food. And such officer, inspector or constable, if he suspect the same to have been sold contrary to the provisions of the Sale of Food and Drugs Acts, shall submit the same to be analysed. Provided that no samples other than milk shall be taken in course of delivery except upon the request or with the consent of the purchaser or consignee.

In obtaining samples in course of delivery under the foregoing sections, it is necessary for the officer, etc., procuring the sample to have acted personally. Such official cannot act by any mere assistant or agent.¹

Private
purchaser.

A private person is not entitled to take samples in course of delivery under Section 3 of the Food and Drugs Act, 1879.²

The place
of delivery.

The place of delivery means the place where the purchaser takes possession of the article of food, not the place whence the purchaser under the contract of sale pays the carriage.³

Samples
from more
than one
vessel.

In a case where samples were taken from five cans of milk in course of delivery to a workhouse, and where

¹ *Holt v. Morris*, 1893.

² *Harris v. Williams*, 1889.

³ *Filshie v. Evington*, 1892.

there was a large deficiency of cream in two samples, it was held that the procuring of each sample was a separate transaction, and that a penalty could be imposed in respect of each sample deficient.¹

Any officer[†] authorised to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purposes of analysis samples of any butter or substances purporting to be butter, or of any cheese or substances purporting to be cheese, which are exposed for sale and not marked margarine or margarine-cheese as the case may require, as provided by these Acts; and any such substances not being so marked shall be presumed to be exposed for sale as butter or as cheese as the case may be.

Power to
take
samples
without
purchase in
the case of
butter or
cheese.
Margarine
Act, 1887,
s. 10.

In taking samples of articles of food other than butter or cheese, care should be taken to actually tender the price. No second tender is necessary, and if the sample is refused, proceedings can be taken for obstruction.²

¹ *Fecitt v. Walsh*, 1891.

² *Farley v. Higginbotham*, 1898.

DEALING WITH SAMPLE WHEN PROCURED.

Purchaser
must notify
his inten-
tion.
F. & D. Act,
1875, s. 14.
F. & D. Act,
1899, s. 13.

Article to
be divided
into three
parts.

The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

Division of
sample.

Before the passing of the Act of 1899, this section read: "and shall *offer to* divide, etc., . . . and shall if required to do so *proceed accordingly and shall* deliver one of the parts". Now, however, the purchaser must divide the sample into three parts, whether the seller desires to retain a portion or not.

Where several samples of one description of food or drug are obtained each sample must be divided according to the requirements of the Acts.

An inspector went into a shop and purchased six twopenny bottles of camphorated oil. Having notified

the seller that the articles were required for analysis by the public analyst, the inspector proceeded to divide his purchase into three lots of two bottles each, sealing each separate lot of two bottles in a separate bag. The Court held that this did not satisfy the requirements of the Acts, as each bottle constituted a separate article and should have been divided accordingly.¹

It has been held that the provisions of this section in regard to notification, division of sample, etc., apply to a purchase by a private person as well as to a purchase by a public officer.² The Irish judges dissented from that view,³ and their reasoning was adopted by Lord Russell, C. J., in *Buckler v. Wilson* (1896), in which it was stated that the provisions of this section only refer to cases where the article is purchased with the intention of having it analysed.

Where the sample is procured by an officer of the Local Government Board, or the Board of Agriculture, the sample has to be divided into four parts. (See *Powers of Local Government Board*, etc., page 95.)

It is not sufficient for the person procuring the sample merely to state that the article was obtained for the purposes of analysis, without adding "by the public analyst," or such words as will make the seller understand that the article is to be submitted to some official analyst.⁴ Notifica-
tion.

Notice to the seller that it is intended to have an analysis made, and the making of the analysis, are

¹ *Mason v. Cowdary*, 1900.

² *Parsons v. Birmingham Dairy Co.*, 1882.

³ *Guardians of Enniskillen Union v. Hilliard*, 1884.

⁴ *Barnes v. Chipp*, 1878; *Weeker v. Webb*, 1887.

conditions precedent to a prosecution, even though the seller admits the offence at the time.¹

An inspector sent some one into a shop to buy a pound of butter. The butter was brought out to the inspector, who thereupon entered the shop and notified the shopkeeper that the sample was purchased for analysis. *Held*, that the notification by the inspector was good, he being the "purchaser," not the person whom the shopman actually served.²

"Forth-
with
notify."

An interval of two minutes occurred between the purchase of an article on behalf of an inspector and the actual notification by the inspector (who had been standing outside the shop). *Held*, that the notification was "forthwith".³

Delivery to
analyst by
hand.

The person procuring the sample need not himself deliver the sample to the analyst, but may hand it to another for the purposes of such delivery.⁴

Through
the Post
Office as
registered
parcel.
F. & D. Act,
1875, s. 16.

F. & D. Act,
1899, s. 15.

If the analyst does not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the Post Office as a registered parcel, subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

¹ Smart & Son v. Watts, 1895.

² Smith v. Stace, 1881.

³ Somerset v. Miller, 1890.

⁴ Horder v. Scott, 1880.

Before the passing of the Act of 1899 the wording was "as a registered letter".

In the case of a sample taken of milk in course of delivery, and of margarine or margarine-cheese forwarded by a public conveyance, the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the consignor if his name and address appear on the can or package containing the articles sampled.

Division of sample in course of delivery. F. & D. Act, 1899, s. 10.

With the above exception, it is not necessary for a portion of the sample to be sent to the seller when sample is taken in course of delivery.¹

When the Commissioners of Customs take a sample of any consignment they shall divide it into not less than three parts, and send one part to the importer, and one part to the principal chemist of the Government laboratories, and retain one part. (See *Powers of Commissioners of Customs*, page 91.)

Division of sample of imported article of food. F. & D. Act, 1899, s. 1(4).

The officer taking the sample in course of delivery need not notify the seller of his intention of having the article analysed, nor need he offer to divide the sample.²

The whole of the sample taken for analysis under this section need not be submitted.³

¹ *Rouch v. Hall*, 1881.

² *Morton v. Fyfe*, 1896.

³ *Rolfe v. Thomson*, 1892.

OBSTRUCTION OF OFFICER IN DISCHARGE
OF HIS DUTIES.

Obstruct-
ing an
officer.
F. & D. Act,
1899, s. 16.

Bribery.

Any person who wilfully obstructs or impedes any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents or attempts to prevent the due execution by such inspector or officer of his duty under those Acts shall be guilty of an offence. (See *Penalties*, page 104.)

Refusing to
furnish
samples.
F. & D. Act,
1875, s. 17.

If any officer, inspector, or constable authorised to procure samples, shall apply to purchase any article of food or any drug exposed for sale, or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector or constable, such person shall be liable to a penalty. (See *Penalties*, page 104.)

F. & D. Act,
1879, s. 5.

Any street or open place of public resort shall be held to come within the meaning of the foregoing section.

This section applies to articles of food or to drugs exposed for sale by wholesale as well as by retail.¹

Care should be taken by the purchaser that the payment is actually tendered; no second tender is necessary.² Tender of payment.

The form of purchase need not be gone through in the case of taking samples of butter or cheese, or of substances purporting to be such. Margarine Act, 1887, s. 10.

Where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained. Articles in unopened tins or packets. F. & D. Act, 1899, s. 18.

To refuse to sell such articles except in unopened tins or packets could not be held to be obstruction.

The seller or consignor or any person or persons entrusted by him for the time being with the charge of any article of food in course of delivery, shall be guilty of an offence if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purposes of analysis, and provided that, except in the case of milk in the course of delivery, the purchaser or consignee has either requested or consented to the taking of such sample. (See *Penalties*, page 105.) Refusing to give sample in course of delivery. F. & D. Act, 1879, s. 4. F. & D. Act, 1899, s. 14.

¹ M'Hugh v. M'Grath, 1894.

² Farley v. Higginbotham, 1898.

It is only in the case of milk in course of delivery that the request or consent of the purchaser or consignor can be dispensed with.

Inspector's
authority.

Where the seller does not demand the inspector's authority, the inspector is not bound to produce it.¹

Obstruc-
tion.

A publican, on request, supplied an inspector with rum out of a bottle on a shelf in the bar. After tasting it, the inspector demanded half a pint out of the same bottle, saying he was an inspector and that it was for analysis. The publican refused to supply out of that particular bottle. *Held*, that an offence had been committed.²

Master
liable for
obstruc-
tion by
servant.

A manager learning that coffee purchased from an assistant was intended for analysis, threw the coffee over the floor of the shop, offered to return the money, and refused to deliver coffee similar to that originally purchased. *Held*, that the proprietor of the shop was guilty of obstruction on the part of his manager.³

ANALYST'S CERTIFICATE.

Form of
certificate.
F. & D.
Act, 1875,
s. 18, and
Schedule.

The certificate of the analysis shall be in the following form, or to the like effect:—

FORM OF CERTIFICATE.

To ⁴

I, the undersigned, public analyst for the
do hereby certify that I received on the

¹ *Payne v. Hack*, 1894.

² *Ibid.*

³ *Farley v. Higginbotham*, 1898.

⁴ Here insert the name of the person submitting the article for analysis.

day of _____, 19____, from¹
a sample of _____ for analysis (which then
weighed² _____), and have analysed the same,
and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of genuine
or,

I am of opinion that the said sample contained the
parts as under, or the percentages of foreign ingredients
as under:—

*Observations.*³

As witness my hand, this _____ day of
A. B.,
at _____

¹ Here insert the name of the person delivering the sample.

² When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

³ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

Weight of
sample.

The analyst should fill in the weight of the article, where it is material, but the omission of the weight does not necessarily invalidate the certificate even though the article could have been conveniently weighed.

In an analysis of butter, the analyst omitted to specify the weight of the sample, and it was urged that the certificate was thereby invalidated. The Court held, however, that having regard to the discretion given to analysts by the footnote to the form of certificate, and as, in this case, it was not suggested that the accuracy of the analysis depended upon the weight being stated in the certificate, the omission was not such as to invalidate the certificate.¹

Observa-
tions only
to be made
in case of
adultera-
tion.

The "observations" which follow the "result" of the analysis in the form of certificate which is given are only to be made in cases of adulteration. But if, in a case not of adulteration, such "observations" are made amounting only to an expression of opinion, and not to a statement of fact, this, though improper, will not necessarily vitiate the conviction.²

In a case
other than
of adul-
teration,
the parts
contained
need not be
specified.
Result.

When the case is not one of adulteration, the certificate of a public analyst of the "result" need not set out the parts contained in the sample, but need only state the result of the analysis.³

A certificate of a public analyst that a sample of beer submitted to him "contains arsenic" has been held to be insufficient,⁴ and it is not enough to certify that the beer "contains a serious quantity of arsenic".⁵

Per Lord Alverstone, C. J.: Analysts' certificates

¹ *Sneath v. Taylor*, 1901.

² *Bakewell v. Davis*, 1894.

³ *Ibid.*

⁴ *Lee v. Bent*, 1901.

⁵ *Barlow v. Noblett*, 1901.

ought to contain particulars, so that the magistrates may have before them materials upon which they can come to a conclusion.

An estimate of the excess of water in the entire sample has been held to be insufficient, and that the certificate ought to have specified the proportion of water mixed with the article analysed.¹

It has been held that a certificate merely stating that the sample contained 5 per cent. of added water was bad as evidence.²

But a certificate is good where, without stating the constituent parts of the sample analysed, it states such other facts as will enable the justices to come to a conclusion themselves as to whether the article had been adulterated or not.³

In certifying the result of an analysis under the Sale of Food and Drugs Acts, an analyst shall have regard to such regulations as the Board of Agriculture may make for determining what deficiency in any of the normal constituents of genuine milk, cream, butter or cheese, or what addition of extraneous matter or proportion of water in any sample of milk (including condensed milk), cream, butter or cheese shall, for the purposes of such Acts, raise a presumption, until the contrary is proved, that the milk, cream, butter or cheese is not genuine or injurious to health.

Analyst to have regard to standards of purity fixed by Board of Agriculture. F. & D. Act, 1899, s. 4(1).

The regulations issued by the Board of Agriculture in reference to milk and skimmed or separated milk will be found in the Appendix (page 169).

¹ *Newby v. Sims*, 1894.

² *Fortune v. Hanson*, 1896.

³ *Bridge v. Howard*, 1897; *Reg. v. H. Smith and D. Kerr*, 1896.

The analyst should state from whom he actually and physically received the sample.¹

It is open to argument whether the analyst must personally conduct the analysis. It is probable that in the majority of cases the actual analyses have been carried out by assistants.

Any purchaser entitled to have article analysed. F. & D. Act, 1875, s. 12.

Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under the Sale of Food and Drugs Acts, or any Act thereby repealed, shall be entitled on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

PROCEEDINGS.

If certificate shows offence committed proceedings may be taken. F. & D. Act, 1875, s. 20.

When the analyst, having analysed any article, shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of the Sale of Food and Drugs Acts has been

¹ Harris v. Williams, 1889.

committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty imposed for such offence, before any justices in Petty Sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

A private purchaser has a right to take proceedings, but should comply with the requirements of Section 14 of the Act of 1875 (page 70) in regard to notification, etc.

It is not necessary for an officer taking proceedings to prove, as a condition precedent, that he was directed to prosecute by the local authority appointing him.¹

Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of Section 25 of the Sale of Food and Drugs Act, 1875, as amended (relating to a written warranty), any proceedings under the Sale of Food and Drugs Acts for giving the warranty relied on by the defendant in such prosecution may be taken as well before a Court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis

Proceed-
ings on
ground
of false
warranty.

Jurisdic-
tion.
F. & D. Act,
1899, s. 20
(5).

¹ Hale v. Cole, 1891.

as before a Court having jurisdiction in the place where the warranty was given.

This section overrules the decision in *Reg. v. Smith* as to jurisdiction.

It is to be observed that the provision applies only where the seller of the article has been prosecuted and discharged as above mentioned.¹

Proceedings at the instance of the Local Government Board and Board of Agriculture.
F. & D. Act, 1899, s. 2(2).

Where an officer of the Local Government Board or the Board of Agriculture procures samples and causes an analysis to be made, there shall be the like duty and power on the part of the local authority to cause proceedings to be taken as if the local authority had caused the analysis to be made. (See page 95.)

Time limit for taking proceedings.
F. & D. Act, 1899, s. 19, (1).

When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof shall not be instituted after the expiration of twenty-eight days from the time of the purchase.

False warranty time limit.

In proceedings under Section 10 of the Food and Drugs Act, 1879, now replaced by the foregoing section of the Act of 1899, it was held that a summons against the original vendor of an article of food, for giving a false warranty in writing in respect of it to a purchaser, need not be served within twenty-eight days from the purchase of the food for test purposes from that purchaser, it

¹ *Reg. v. H. Smith and D. Kerr*, 1896.

being only necessary that the summons should be served within a reasonable time.¹ This decision still holds good in prosecutions for giving a false warranty, where the article of food or drug has been obtained by a private purchaser not for analysis, and it is afterwards ascertained that an offence against the Acts has been committed. Proceedings in such case may be instituted within six months as provided by the Summary Jurisdiction Acts.

In all cases where an information is laid before justices that any person has committed an offence it shall be lawful for such justice or justices to issue his or their summons directed to such person requiring him to appear before a justice or justices to answer thereto.

Issue of
summons.
Summary
Jurisdiction Acts,
11 & 12
Vict., cap.
43, s. 1.

It has been held that the summons must be signed and issued by the same justice who heard the complaint. Also that the appearance of the defendant under protest does not cure the defect in a summons issued by a justice who has not heard the complaint.²

Signing
and issu-
ing.
Defect in
summons.

A summons against a limited company must be served at the registered offices of the company. It cannot be served upon an employé in a branch establishment.³

In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less time than fourteen

Summons
shall state
particulars
of offence.
F. & D. Act,
1899, s. 19
(2).
When re-
turnable.

¹ Cook v. White, 1896.

² Dixon v. Wells, 1890.

³ Pearks, Gunston & Tee v. Richardson, 1901.

days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

Copy of
analyst's
certificate
to be served
with sum-
mons.

The extension of time (fourteen days) for the return of the summons and the provision as to service of copy of the analyst's certificate are points which should be carefully noted.

Particu-
lars.

Conflicting decisions have been given on the subject of the omission of particulars from the summons.

In the year 1890¹ the Court held that the summons was not invalidated by such omission.

In the year 1893² the Court took the opposite view.

But in 1894 the earlier decision in the case of *Reg. v. Wakefield* was followed, it being held that if the justices are satisfied that the defendant is prejudiced by the absence of particulars an adjournment should be granted.³

The wording of the Act of 1899 now appears to render the stating of particulars essential to the validity of the summons.

It has been held that sufficient particulars were given where the summons stated the offence to be "selling milk that was adulterated contrary to Section 6 of the Sale of Food and Drugs Act, 1875".

Notice to the seller that it is intended to have an analysis made and the making of the analysis are conditions precedent to a prosecution, even though the seller admits the offence at the time.⁴

¹ *Reg. v. Wakefield*, 1890.

² *Barnes v. Rider*, 1893.

³ *Neale v. Devenish*, 1894.

⁴ *Peart v. Barstow*, 1879; *Smart & Son v. Watts*, 1895.

In the case of *Buckler v. Wilson* (1896), however, it was held that the obtaining of a certificate of analysis is not a condition precedent to proceedings.

Nothing in these Acts contained shall affect the power of proceeding by indictment or take away any other remedy against any offender under these Acts, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Proceedings by indictment and contracts not to be affected. F. & D. Act, 1875, s. 28.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under these Acts, together with the costs paid by him upon such conviction, and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty

to prove that the conviction was wrongful or that the amount of costs awarded or claimed was unreasonable.

This section provides a remedy for those cases where a trader either has received no warranty at all with his purchase, or has received a warranty which has been held to be insufficient for the requirements of the Acts, and he has consequently been convicted for selling the adulterated article. The trader can bring an action against the person who sold him the adulterated article, not only for damages for breach of contract, but also for the amount of the penalty inflicted and for all costs incurred, provided that he can prove his *bonâ fides* in the manner indicated in the foregoing section.

EVIDENCE.

Certificate
of analyst
primâ facie
evidence
for prose-
cution.
F. & D. Act,
1875, s. 21.

At the hearing of the information in proceedings under the Sale of Food and Drugs Acts, the production by the *prosecution* of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness.

Similar provision is made in the case of prosecution by Commissioners of Customs for importation of produce improperly marked. (See *Powers of Commissioners of Customs*, page 90.)

The production by the *defendant* of a certificate of analysis by a public analyst in the form prescribed in Section 18 of the Sale of Food and Drugs Act, 1875, shall be sufficient evidence of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness.

Certificate of public analyst *prima facie* evidence for defence.
F. & D. Act, 1899, s. 22 (1).

A copy of every such certificate to be produced by the defendant at the hearing shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the Court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

Copy of certificate to be sent to prosecutor.
F. & D. Act, 1899, s. 22 (2).

By Section 19 of the Act of 1899 a copy of any analyst's certificate obtained on behalf of the prosecutor must be served with the summons.

It is important to notice that where the defendant shows that he bought the article with a written warranty, and sold it in the same state as he purchased it, the certificate of the public analyst used in those proceedings is not evidence in subsequent proceedings against the person who gave the warranty.¹

At the hearing of the information in such proceedings, the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he

Parts retained to be produced.
F. & D. Act, 1875, s. 21.

¹ *Tyler v. Kingham & Son, Ltd.*, 1900.

Defendant
and his wife
may give
evidence.

think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

If the defendant tenders himself or his wife to give evidence, and such evidence is taken, the production of the certificate of the analyst is not conclusive evidence.¹

In the absence of evidence to contradict the certificate of the analyst produced by the prosecution, the magistrate is bound to accept the certificate as conclusive.²

But magistrates are not bound to discard their own special knowledge on the subject.³

A magistrate is not bound to convict merely upon production of the analyst's certificate, where the analyst is examined as a witness.⁴

Trivial
offence.

In prosecutions for adulterating milk, in one case with 12 per cent. of added water, and in the other case with 11 per cent. of added water, the magistrates received the analyst's certificates as sufficient evidence of the facts stated, but it appeared to them that the milk was exceptionally good, the butter fat being above normal. Although the charge was proved, the magistrates considered the offences to be of so trifling a nature that they dismissed the summonses under Section 16 of the Summary Jurisdiction Act, 1879.

The High Court remitted the cases to the justices, with an intimation that if the milk had been exceptionally good after the adulteration it was within the discretion

¹ *Hewitt v. Taylor*, 1896. ² *Harrison v. Richards*, 1880.

³ *Reg. v. Admiral Field and others*, 1895; *Shortt v. Robinson*, 1899.

⁴ *Fyfe v. Hamilton*, 1894.

of the justices to dismiss the case as being too trivial an offence, but that if the milk was only exceptionally good before the adulteration, the offence was one for which they should convict.¹

The justices before whom any complaint may be made, or the Court before whom any appeal may be heard, under the Sale of Food and Drugs Acts shall, on the request of either party, or in the absence of any such request, may, if they think fit, cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result of the analysis; and the expenses of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Duty of Court to send article for analysis.
F. & D. Act, 1875, s. 22.
Ibid., 1899, s. 21.

Before the passing of the Act of 1899 the justices could exercise their discretion as to sending the sample to Somerset House for analysis; now, however, they have no discretion in the matter, but are bound to comply where either party requests that it may be done. When no such request is made, and the justices consider it desirable to be furnished with an independent analysis,

¹ *Banks v. Wooler*, 1900; *Banks v. Brown*, 1900.

they can send the sample to Somerset House for that purpose.

F. & D. Act, 1899, s. 3(4). Where the Local Government Board or the Board of Agriculture act in default of the local authority, and proceed to recover the expenses incurred, an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

POWERS OF COMMISSIONERS OF CUSTOMS.

Commissioners of Customs to prosecute for importation of produce insufficiently marked. F. & D. Act, 1899, s. 1(2). Prosecutions shall be undertaken by the Commissioners of Customs for offences committed in the importation of agricultural and other produce insufficiently marked, *viz.*: margarine or margarine-cheese, except in packages conspicuously marked "Margarine" or "Margarine-cheese," as the case may require; adulterated or impoverished butter (other than margarine), or adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the butter, or milk or cream has been so treated; condensed separated or skimmed milk, except in tins or other receptacles which bear a label whereon the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type; or any

adulterated or impoverished article of food concerning the importation of which Her Majesty may make an Order in Council. Subject to the provisions of the Sale of Food and Drugs Act, 1899, this section shall have effect as if it had been part of the Customs Consolidation Act, 1876.

By Section 30 of the Act of 1875 the Commissioners of Customs have power to detain tea at the port of entry, if adulterated, and to forfeit and destroy it if unfit for human food. No similar power is given under the Act of 1899 in regard to the importation of produce improperly marked.

The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the foregoing provisions.

Customs to take samples of consignments. F. & D. Act, 1899, s. 1(3).

Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer, and one part to the principal chemist of the Government laboratories, and retain one part.

Division of sample. F. & D. Act, 1899, s. 1(4).

Name of
offending
importer to
be reported
to Board of
Agriculture.
F. & D. Act,
1899, s. 1(6).

If, in any case, the Commissioners of Customs are of opinion that an offence against Section 1 of the Act of 1899 has been committed, they shall communicate to the Board of Agriculture, for their information, the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

Analyst's
certificate
prima facie
evidence
for prosecution.
F. & D. Act,
1899, s. 1(5).

In any proceedings under this section, the certificate of the principal chemist of the result of the analysis shall be sufficient evidence of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness. (See *Evidence*, page 86.)

Adulterated or impoverished.
F. & D. Act,
1899, s. 1(7).

For the purposes of this section, an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance or nature.

Preservatives and colouring matter.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health.

Considerable difference of opinion appears to exist as to what percentage of preservative mixed or used with the

article of food can be considered to be harmless. By Section 4 of the Act of 1899 the Board of Agriculture is given power to make regulations as to the analysis of milk, cream, butter or cheese, thereby setting up certain standards of purity. (The regulations affecting milk and skimmed and separated milk will be found in the Appendix.)

The mixing of sulphate of copper with peas for the purpose of preserving, fixing or restoring their natural colour has been held to render the article injurious to health.¹

Special Provision as to Tea.

All tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships' stores or for

Tea to be
examined
by Customs
on im-
portation.
F. & D. Act,
1875, s. 30.

¹ *Summers v. Grist*, 1896.

exportation ; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

Unwhole-
some tea. The importation of unwholesome tea has lately been attracting attention, it being alleged that some of the importations contain microbial products dangerous to health. The Commissioners of Customs by the foregoing section have power to examine all tea at the port of entry, and where they are satisfied that it is unfit for human food they may confiscate and destroy it. This of course is quite distinct from the powers conferred by the Public Health Acts, which provide that any article of food unfit for human consumption can be dealt with by officers of the local authorities.

" Ex-
hausted."
F. & D. Act,
1875, s. 31. Tea to which the term "exhausted" is applied shall mean and include any tea which has been deprived of its proper quality, strength or virtue by steeping, infusion, decoction, or other means.

POWERS OF LOCAL GOVERNMENT BOARD AND BOARD OF AGRICULTURE.

Conditions under which Local Government Board or
Board of Agriculture may procure samples of
any article of food.

The Local Government Board may, in re-
lation to any matter appearing to that Board
to affect the general interest of the consumer,
and the Board of Agriculture may, in relation
to any matter appearing to that Board to
affect the general interests of agriculture in
the United Kingdom, direct an officer of the
Board to procure for analysis samples of any
article of food, and thereupon the officer shall
have all the powers of procuring samples con-
ferred by the Sale of Food and Drugs Acts,
and those Acts shall apply as if the officer
were an officer authorised to procure samples
under the Sale of Food and Drugs Act, 1875,
except that (a) the officer procuring the sam-
ples shall divide the same into four parts,
and shall deal with three of such parts in the
manner directed by Section 14 of the Sale of
Food and Drugs Act, 1875, as amended (see
page 70), and shall send the fourth part to

Obtaining
sample.
F. & D. Act,
1899, s. 2(1).

Division of
sample.

Fee for
analysis.

the Board, and (b) the fee for analysis shall be payable to the analyst by the local authority of the place where the sample is procured.

Local Au-
thority to
take pro-
ceedings.
F. & D. Act,
1899, s. 2(2).

The Board shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and power on the part of the local authority to cause proceedings to be taken as if the local authority had caused the analysis to be made.

Power for officer of Board of Agriculture to enter manufactory of margarine or margarine-cheese to inspect process and to take samples.

Inspection
of manu-
factory of
margarine
and mar-
garine-
cheese.
F. & D. Act,
1899, s. 7(2).

Any officer of the Board of Agriculture shall have power to enter at all reasonable times any manufactory of margarine or margarine-cheese, and to inspect any process of manufacture therein and to take samples for analysis.

Power for Local Government Board or Board of Agriculture to act in default of local authority.

By Section 3 (1) of the Act of 1899 an obligation is laid upon every local authority to put the Acts into force, and in particular to direct their officers to take samples for analysis.

If the Local Government Board or Board of Agriculture, after communication with a local authority, are of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interests of agriculture in the United Kingdom, as the case may be, the Board concerned may, by order, empower an officer of the Board to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

Power to act in default of Local Authority. F. & D. Act, 1899, s. 3(2).

The expenses incurred by the Board or their officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the Board on demand, and in default the Board may recover the amount of the expenses with costs from the local authority.

Expenses incurred recoverable from Local Authority. F. & D. Act, 1899, s. 3(3).

For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

F. & D. Act, 1899, s. 3(4).

Power for Board of Agriculture to make regulations as to analysis of milk, cream, butter, or cheese.

Board of
Agriculture
may fix
standards
of purity.
F. & D. Act,
1899, s. 4.

The Board of Agriculture may, after such inquiry as they may deem necessary, make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter or cheese, or what addition of extraneous matter or proportion of water in any sample of milk (including condensed milk), cream, butter or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary is proved, that the milk, cream, butter or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis under those Acts.

Any regulations made under this section shall be notified in the *London* and *Edinburgh Gazettes*, and in the *Dublin Gazette*, and shall also be made known in such other manner as the Board of Agriculture may direct.

The powers of the Board of Agriculture to make regulations do not extend to any other articles than milk, cream, butter or cheese. Under Section 1 of the Act of 1899 adulterated or impoverished butter, milk or cream when imported must be conspicuously marked, and the regulation may be extended by an Order in Council to any other imported article of food. The addition of any preservative or colouring matter to imported articles of

food will not be deemed to be adulteration, provided that it is of such a nature and in such quantity as not to render the article injurious to health.

The regulations issued by the Board of Agriculture in reference to milk and skimmed or separated milk will be found in the Appendix (page 169).

A Departmental Committee is taking evidence in regard to butter.

PENALTIES.

Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to twenty pounds as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

This has reference to the following sections of the Act of 1875, *viz.*, Sections 6, 7, 9 and part of 27. (See Introduction, page 9.)

Where under any provision of the Sale of Food and Drugs Acts a person guilty of an offence is liable to a fine exceeding fifty pounds, and the offence, in the opinion of the Court, was committed by the personal act, default or culpable negligence of the person accused, that person shall be liable (if the Court is of opinion that a fine will not meet the circum-

Increase of
penalties.
F. & D. Act,
1899, s. 17
(1).

Power of
Court to
imprison.
F. & D. Act,
1899, s. 17
(2).

stances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months.

This has reference to the sections enumerated in the preceding paragraph, and to offences under the Margarine Act, 1887, and also to third offences under the Act of 1899, Sections 1, 8, 16, 20 (6).

Mixing
food with
injurious
ingredients
and selling
same.
F. & D. Act,
1875, s. 3.

For mixing, colouring, staining or powdering any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold:—

For ordering or permitting any other person to do so:—

For selling any such article:—

A penalty in each case not exceeding £50 for a first offence. Every offence after a conviction for a first offence shall be a misdemeanour, for which the person on conviction shall be imprisoned for a period not exceeding six months, with hard labour.

Mixing
drugs with
injurious
ingredients
and selling
same.
F. & D. Act,
1875, s. 4.

For mixing, colouring, staining or powdering any drug with any ingredient or material so as to affect injuriously the quality or potency:—

For ordering or permitting any other person to do so:—

For selling such drug:—

A penalty in each case not exceeding £50 for a first offence. Every offence after a conviction for a first offence shall be a misdemeanour, for which the person on conviction shall be imprisoned for a period not exceeding six months, with hard labour.

For selling, to the prejudice of the purchaser, any article of food or any drug which is not of the nature, substance and quality demanded :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Prejudice of purchaser. Articles of food or drug not of proper nature, substance and quality. F. & D. Act, 1875, s. 6.

For selling any compound article of food or compounded drug which is not composed of ingredients in accordance with demands of purchaser :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Compounded articles of food and compounded drugs. F. & D. Act, 1875, s. 7.

For abstracting from any article of food any part of it so as to affect injuriously its quality, substance, or nature, and for selling without notice of the alteration :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Abstraction of any part of an article of food before sale, and selling without notice. F. & D. Act, 1875, s. 9.

For importing any of the following in packages or receptacles insufficiently marked, viz., margarine, margarine-cheese, adulterated or impoverished butter, milk or cream, condensed separated or skimmed milk, or any adulterated or impoverished article of food to which the Acts may be extended by an Order in Council :—

Importation of produce insufficiently marked. F. & D. Act, 1899, s. 1.

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First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Margarine with more than 10 per cent. butter fat. 10 per cent. of butter fat :—

F. & D. Act, 1899, s. 8. *First Offence* : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Any dealer in margarine or margarine-cheese convicted. Margarine Act, 1887, s. 4. Any dealer in margarine and margarine-cheese, whether wholesale or retail, whether a manufacturer, importer, or as a consignor or consignee, or as commission agent or otherwise, found guilty of an offence under the Margarine Act, 1887, as amended :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Registration. Margarine Act, 1887, s. 9. F. & D. Act, 1899, s. 7(4). For non-registration of manufactory of margarine or margarine-cheese, and premises of wholesale dealer in such substances :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three

months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

For an offence against any of the provisions relating to the keeping of a register by every occupier of a manufactory of margarine or margarine-cheese, and every wholesale dealer in such substances, showing the quantity and destination of each consignment sent out :—

First Offence : A fine not exceeding £10.

Subsequent Offence : A fine not exceeding £50.

For selling, exposing or offering for sale condensed separated or skimmed milk not bearing on the tin or other receptacle a label clearly visible to the purchaser on which are printed the words "Machine-skimmed milk," or "Skimmed milk," as the case may require : A fine not exceeding £10.

Any person who shall forge, or shall utter knowing it to be forged, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour, and be punishable on conviction by imprisonment for a term not exceeding two years with hard labour.

Every person who shall wilfully apply to an article of food or a drug a certificate or warranty given in relation to any other article or drug shall be guilty of an offence :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100; or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing :—

Keeping a register.
F. & D. Act,
1899, s. 7(2).

Condensed etc., milk, improperly labelled.
F. & D. Act,
1899, s. 11.

Forgery of certificate or warranty.
F. & D. Act,
1875, s. 27
(1).

Wilful misapplication of warranty.
F. & D. Act,
1875, s. 27
(2).

False warranty.
F. & D. Act,
1899, s. 20
(6).

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

False descriptive label.

F. & D. Act, 1875, s. 27 (4).

Every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold shall be guilty of an offence :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Obstruction or bribery.

F. & D. Act, 1899, s. 16.

For obstructing or impeding any inspector or other officer in the course of his duties, or for preventing or attempting to prevent, by any gratuity, bribe, promise or other inducement, the due execution by such inspector or officer of his duty under the Sale of Food and Drugs Acts :—

First Offence : Penalty not exceeding £20.

Second Offence : Penalty not exceeding £50.

Subsequent Offence : Penalty not exceeding £100, or the Court has power to imprison for not more than three months where the third or subsequent offence is committed by the accused's personal act, default, or negligence.

Refusing to sell.

F. & D. Act, 1875, s. 17.

Any person exposing for sale by retail any article of food or any drug, and refusing on the price being tendered to sell the same to any officer, inspector or constable authorised to take samples under the Acts, shall be liable to a penalty not exceeding £10. To refuse to sell might, however, be held to be obstruction under Section

16 of the Act of 1899 (above), and in such case the defendant would be liable to a heavier penalty.

For refusing to allow the quantity of milk required for the purpose of analysis to be taken in course of delivery by the officer, inspector, or constable authorised, and also in regard to every other article of food in course of delivery where the purchaser or consignee either requests or consents to the sample being taken: A penalty not exceeding £10. This section might also be held to be included in Section 16 of the Act of 1899 (above).

Refusing to allow sample to be taken in course of delivery.
F. & D. Act, 1879, s. 4.
Ibid., 1899, s. 14.

Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle, without having conspicuously inscribed on such vehicle or receptacle his name and address, shall be liable on summary conviction to a fine not exceeding £2.

Selling milk in street: name and address of vendor to be on cart, etc.
F. & D. Act, 1899, s. 9.

RECOVERY OF PENALTIES.

Every penalty imposed by the Sale of Food and Drugs Acts shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three.

England.
F. & D. Act, 1875, s. 20.

In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or

Ireland.
F. & D. Act, 1875, s. 20.

justices of the peace, sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Scotland.
F. & D. Act,
1875, s. 33
(9).
Amended
by S. L. R.
Act, 1893.

All penalties provided by the Sale of Food and Drugs Acts to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff court, or at the option of the person seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of "The Summary Procedure Act, 1864," or of the Police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs.

Every such penalty may be recovered at the instance of the procurator-fiscal of the jurisdiction, or of the person who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of these Acts.

APPROPRIATION OF PENALTIES.

Every penalty imposed and recovered under these Acts shall be paid in the case of a prosecution by an officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing these Acts, any Statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act (Ireland), 1851, and the Acts amending the same.

Every penalty imposed and recovered under the Sale of Food and Drugs Acts shall be paid to the clerk of the court, and by him shall be accounted for and paid to the treasurer of the county general assessment or the police assessment of the burgh as the sheriff shall direct.

England.
F. & D. Act,
1875, s. 26.

Ireland.

Scotland.
F. & D. Act,
1875, s. 33
(9).

Appropriation of penalties under Margarine Act, 1887, s. 11.

Any part of any penalty recovered under the Margarine Act, 1887, may, if the Court shall so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis and any other reasonable expenses to which the Court shall consider him entitled.

Such penalties recovered under the Margarine Act, 1887, as are not directed to be paid to the private prosecutor are to be paid to an officer, inspector, or constable, to be paid by him to the authority for whom he acts, in accordance with Section 26, Food and Drugs Act, 1875.¹

APPEAL.

England. To Quarter Sessions. F. & D. Act, 1875, s. 23. Amended by 47 & 48 Vict., cap. 43, ss. 4, 6.

Any person who has been convicted of any offence, punishable by any Act hereby repealed or by these Acts, by any justices may appeal in England to the next general or quarter sessions of the peace.

Ireland.

In Ireland any person who has been convicted of any offence punishable by these Acts may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions

¹ Reg. v. Titterton, 1895.

district, or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner and with such notices as are required by the Petty Sessions Acts respectively hereinbefore mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeal shall not be duly prosecuted, shall also apply to any appeal made under these Acts.

Either party, if dissatisfied with the decision of the justice before whom the complaint is heard, as being

Special
case.
20 & 21
Vict., cap.
43, ss. 2, 14.

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erroneous in point of law, may appeal to the High Court by way of special case. Application must be made within three days of the decision complained of.

Any person appealing to the High Court in this way shall be deemed to have abandoned his right of appeal to quarter sessions.

Scotland.
F. & D. Act,
1875, s. 33
(11).
Amended
by 56 & 57
Vict., cap.
54.

It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceedings under these Acts to appeal against the same to the High Court of Justiciary in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions and restrictions contained in the said provisions.

EXPENSES OF EXECUTING THE ACTS.

F. & D. Act,
1875, s. 29.

City of
London.

Metropolis.

The expenses of executing the Sale of Food and Drugs Acts shall be borne in the City of London and the liberties thereof by the consolidated rates raised by the Common Council of the City of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the pur-

poses of the Act for the better local management of the metropolis, and otherwise as regards England in counties by the county rate, and in boroughs by the borough fund or rate. Counties and boroughs.

An urban district council is not empowered to pay costs or expenses out of rates, not being a "local authority" within the meaning of the Sale of Food and Drugs Acts. It follows therefore that the County Council should reimburse an urban district council for expenses so incurred. Urban District Council.

As regards Ireland, in counties by the grand jury cess, and in boroughs by the borough fund or rate; all such expenses payable in any county out of grand jury cess shall be paid by the treasurer of such county; and Ireland.

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

The expenses of executing these Acts shall be borne in Scotland, in counties, by the county general assessment, and burghs by the police assessment. Scotland.

Excep-
tions.
Municipal
Corpora-
tion Act,
1882, s. 152.

The Town Council of any borough having a separate Court of Quarter Sessions shall be exempt from contributing towards the expenses incurred in the execution of the Acts in respect to the county within which such county is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by Section 242 of the Municipal Corporation Act, 1882, to be sent by him to such Town Council.

Borough
with separ-
ate police.
F. & D. Act,
1879, s. 9.

The Town Council of any borough having under any general or local Act of Parliament or otherwise a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes or parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force.

Analyst's
fee.
F. & D. Act,
1899, s. 2
(b).

Where the Local Government Board or Board of Agriculture direct an officer of the Board to sample any article of food, the fee

for analysis shall be payable to the analyst by the local authority of the place where the sample is procured.

The charge for the postage of the sample to the analyst shall be deemed to be one of the charges of the Acts or of the prosecution, as the case may be.

If the Local Government Board or Board of Agriculture, on failure of a local authority to enforce the provisions of the Acts, empower an officer of the Board to procure the enforcement thereof, the expenses incurred under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the Board on demand, and in default the Board may recover the amount of the expenses, with costs, from the local authority.

For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

APPLICATION OF ACTS TO SCOTLAND.

F. & D. Act,
1875, s. 33.

In the application of these Acts to Scotland the following provisions shall have effect :—

- (1) The term “misdemeanour” shall mean “a crime or offence”.
- (2) The term “defendant” shall mean “defender” and include “respondent”.
- (3) The term “information” shall include “complaint”.
- (4) These Acts shall be read and construed as if for the term “justices,” wherever it occurs therein, the term “sheriff” were substituted.
- (5) The term “sheriff” shall include “sheriff-substitute”.
- (6) The term “borough” shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament.
- (8) These Acts shall be read and construed as if for the expression “the Local Government Board” the expression “the Local Government Board of Scotland” were substituted; and all powers and duties vested in or imposed

Ibid., s. 33
(8).
Ibid., 1899,
s. 23.

on the Secretary for Scotland in relation to the Sale of Food and Drugs Acts shall be transferred to, vested in, or imposed on the Local Government Board for Scotland.

APPLICATION OF ACTS TO IRELAND.

In the application of these Acts to Ire- F. & D. Act,
1875, s. 34.
land :—

The term “borough” shall mean any borough subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled “An Act for the regulation of Municipal Corporations in Ireland”.

The term “county” shall include a county Ibid., 1879,
s. 7. of a city and a county of a town not being a borough; every liberty having a separate court of quarter sessions shall be deemed to be a county.

The term “assizes” shall, with respect to Ibid., 1875,
s. 34. the county of Dublin, mean “presenting term”.

The term “treasurer of the county” shall include any person or persons or bank

in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee.

F. & D. Act,
1875, s. 34.

The term "police constable" shall mean, with respect to the police district of Dublin metropolis, constable of the Dublin Metropolitan Police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

Ibid., 1899,
s. 24.

These Acts shall apply to Ireland with the substitution for "the Board of Agriculture" of "the Department of Agriculture and Technical Instruction for Ireland," and for "the Local Government Board" of "the Local Government Board for Ireland," and for "the *London and Edinburgh Gazettes*" of "the *Dublin Gazette*".

APPENDIX.

APPENDIX.

THE SALE OF FOOD AND DRUGS ACT, 1875.

38 & 39 Vict., Cap. 63.

An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state. [11th August, 1875.]

WHEREAS it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

*1. From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed except in regard to any appointment made under them*¹

Repeal of statutes.

¹ Words in italics have been repealed.

and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

Interpreta-
tion of
words.

2. *The term "food" shall include every article used for food or drink by man, other than drugs or water.*¹

The term "drug" shall include medicine for internal or external use.

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough.

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

DESCRIPTION OF OFFENCES.

Prohibition
of the mix-
ing of in-
jurious
ingredients
and of sell-
ing the
same.

3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanour, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

¹ Words in italics have been repealed.

4. No person shall, except for the purpose of com-
pounding as hereinafter described, mix, colour, stain, or
powder, or order or permit any other person to mix,
colour, stain, or powder, any drug with any ingredient
or material so as to affect injuriously the quality or
potency of such drug, with intent that the same may be
sold in that state, and no person shall sell any such drug
so mixed, coloured, stained, or powdered, under the same
penalty in each case respectively as in the preceding
section for a first and subsequent offence.

Prohibition
of the
mixing of
drugs with
injurious
ingredients
and of sell-
ing the
same.

5. Provided that no person shall be liable to be con-
victed under either of the two last foregoing sections of
this Act in respect of the sale of any article of food, or
of any drug, if he shows to the satisfaction of the justice
of court before whom he is charged that he did not
know of the article of food or drug sold by him being
so mixed, coloured, stained, or powdered as in either of
those sections mentioned, and that he could not with
reasonable diligence have obtained that knowledge.

Exemption
in case of
proof of
absence of
know-
ledge.

6. No person shall sell to the prejudice of the pur-
chaser any article of food or any drug which is not of
the nature, substance, and quality of the article demanded
by such purchaser, under a penalty not exceeding twenty
pounds; provided that an offence shall not be deemed to
be committed under this section in the following cases;
that is to say,

Prohibition
of the sale
of articles
of food
and of
drugs not
of the pro-
per nature,
substance
and qual-
ity.

- (1) Where any matter or ingredient not injurious
to health has been added to the food or drug
because the same is required for the production
or preparation thereof as an article of commerce,
in a state fit for carriage or consumption and
not fraudulently to increase the bulk, weight,
or measure of the food or drug, or conceal the
inferior quality thereof;

- (2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent ;
- (3) Where the food or drug is compounded as in this Act mentioned ;
- (4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Provision
for the sale
of com-
pounded
articles
of food
and com-
pounded
drugs.

Protec-
tion from
offences by
giving of
label.

7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

Prohibition
of the ab-
straction of
any part of
an article
of food
before sale
and selling
without
notice.

9. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

APPOINTMENT AND DUTIES OF ANALYSTS, AND
PROCEEDINGS TO OBTAIN ANALYSIS.

10. In the city of London and the liberties thereof *the commissioners of sewers*¹ of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill and experience, as analyst of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper ; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise : Provided that no person shall hereafter be appointed an analyst for any place under this section who shall be

Appoint-
ment of
analysts.

¹ Words in italics have been amended.

engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions; provided that one of Her Majesty's Principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

Town Council of a borough may engage the analyst of another borough or of the county.

11. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

Power to purchaser of an article of food to have it analysed.

12. Any purchaser of an article of food or of a drug in any place being a district, county, city or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to

have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

13. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market or any police constable under the direction and at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

14. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall *offer to*¹ divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, *proceed accordingly, and shall*¹ deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

¹ Words in italics have been repealed.

Provision
when
sample is
not divided.

15. *If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts, and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.¹*

Provision
for sending
article to
the analyst
through
the Post
Office.

16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered *letter*,¹ subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person re-
fusing to
sell any
article to
any officer
liable to
penalty.

17. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed for sale, or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

Form of the
certificate.

18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

¹ Words in italics have been repealed.

19. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

PROCEEDINGS AGAINST OFFENDERS.

20. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three. In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland,

before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.

21. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

Power to justices to have articles of food and drug analysed.

22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard under this Act may, upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Appeal to Quarter Sessions.

23. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace *which shall be held for*¹

¹ Words in italics have been repealed.

*the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognisance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognisance; and the Court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper.*¹

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if

¹ Words in italics have been repealed.

made in such form and manner and with such notices as are required by the Petty Sessions Acts respectively herein before mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

In any prosecution defendant to prove that he is protected by exception or provision.

Defendant to be discharged if he prove that he bought the article in the same state as sold and with a warranty. No costs except on issues proved against him.

Application of penalties.

24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by an officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of

executing this Act, any Statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour and be punishable on conviction by imprisonment for a term not exceeding two years with hard labour. Punishment for forging certificate or warranty;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds. For wilful misapplication of warranty;

*Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act and be liable to a penalty not exceeding twenty pounds.*¹ For false warranty;

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds. For false label.

28. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in Proceedings by indictment and contracts not to be affected.

¹ Words in italics have been repealed.

any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

EXPENSES OF EXECUTING THE ACT.

Expenses
of execut-
ing Act.

29. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by *the Commissioners of Sewers*¹ of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate.

¹ Words in italics have been amended.

And as regards Ireland, in the counties by the grand jury cess, and in boroughs by the borough fund or rate; all such expenses payable in any county out of grand jury cess shall be paid by the treasurer of such county; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

SPECIAL PROVISION AS TO TEA.

30. From and after the first day of January one thousand eight hundred and seventy-six all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships' stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

Tea to be
examined
by the
Customs
on impor-
tation.

Interpre-
tation of
the Act.

31. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength or virtue by steeping, infusion, decoction, or other means.

Provision
for the
liberty of
a Cinque
Port.

32. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

Applica-
tion of the
Act to
Scotland.

33. In the application of this Act to Scotland the following provisions shall have effect :—

- (1) The term "misdemeanour" shall mean "a crime or offence".
- (2) The term "defendant" shall mean "defender" and include "respondent".
- (3) The term "information" shall include "complaint".
- (4) This Act shall be read and construed as if for the term "justices," wherever it occurs therein, the term "sheriff" were substituted.
- (5) The term "sheriff" shall include "sheriff substitute".
- (6) The term "borough" shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament.
- (7) The expenses of executing this Act shall be borne in Scotland, in counties, by the county general assessment, and in burghs by the police assessment.
- (8) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "one of Her Majesty's Principal Secretaries of State" were substituted.

- (9) All penalties provided by this Act to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff court, or at the option of the person seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of "The Summary Procedure Act, 1864," or of the Police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs.

Every such penalty may be recovered at the instance of the procurator-fiscal of the jurisdiction, or of the person who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of this Act.

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the county general assessment, or the police assessment of the burgh, as the sheriff shall direct.

- (10) *Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff.*¹
- (11) It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this Act to appeal against the same to the next circuit court, or where there are no¹

¹ Words in italics have been repealed.

*circuit courts*¹ to the High Court of Justiciary at *Edinburgh*¹ in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions and restrictions contained in the said provisions.

34. In the application of this Act to Ireland—

Inter-
pre-
ta-
tion of
terms in
applica-
tion of Act
to Ireland.

The term "borough" shall mean any borough subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled, "An Act for the Regulation of Municipal Corporations in Ireland".

The term "county" shall include a county of a city and a county of a town not being a borough.

The term "assizes" shall, with respect to the county of Dublin, mean "presenting term".

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee.

The term "police constable" shall mean, with respect to the police district of Dublin metropolis, constable of the Dublin Metropolitan Police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

¹ Words in italics have been repealed.

35. This Act shall commence on the first day of Com-
October one thousand eight hundred and seventy-five. men-
of the Act.

36. This Act may be cited as "The Sale of Food and Title of
Drugs Act, 1875". the Act.

SCHEDULE.

FORM OF CERTIFICATE.

To ¹

I, the undersigned, public analyst for the
do hereby certify that I received on the
day of , 19 , from ²

a sample of for analysis (which then
weighed ³), and have analysed the
same, and declare the result of my analysis to be as
follows :—

I am of opinion that the same is a sample of genuine
or,

I am of opinion that the said sample contained the
parts as under, or the percentages of foreign ingredients
as under :—

¹ Here insert the name of the person submitting the article for analysis.

² Here insert the name of the person delivering the sample.

³ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

As witness my hand this _____ day of _____
A. B.,
at _____

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

42 & 43 Vict., Cap. 30.

An Act to amend the Sale of Food and Drugs Act, 1875.

[21st July, 1879.]

WHEREAS conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of Section 6 of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the same Act :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

2. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

^{38 & 39}
Vict., cap.
63.

In sale of
adulterated
articles no
defence to
allege pur-
chase for
analysis.

Officer, inspector, or constable may obtain sample of milk at the place of delivery to submit to analyst.

3. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act.

Penalty for refusal to give milk for analysis.

4. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.

Extension of Act as to sale in streets, etc. Reduction allowed to the extent of twenty-five degrees under proof for brandy, whisky, or rum, and thirty-five degrees for gin.

5. Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

6. In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for

brandy, whisky or rum, or thirty-five degrees under proof for gin.

7. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act. Extension of meaning of "county".

8. The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect to the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section *one hundred and seventeen of the Municipal Corporation Act, 1835*,¹ to be sent by him to such town council. Quarter Sessions boroughs not to contribute to county analysts. 5 & 6 W. 4, cap. 79.

9. The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force. Provision for boroughs with separate police.

10. *In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time,*² Special provision as to time for proceedings.

¹ Words in italics have been amended.

² Words in italics have been repealed.

*and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.*¹

¹ Words in italics have been repealed.

MARGARINE ACT, 1887.

50 & 51 Vict., Cap. 29.

An Act for the better Prevention of the Fraudulent Sale
of Margarine. [23rd August, 1887.]

WHEREAS it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Margarine Act, 1887. Short title.
2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-eight. Com-
mencement
of Act.
3. The word "butter" shall mean the substance Definition.
usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

The word "margarine" shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not, and no such substance shall be lawfully sold, except under the name of margarine, and under the conditions set forth in this Act.

4. Every person dealing in margarine, whether whole- Penalty.
sale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or other-

wise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine not exceeding twenty pounds, and for the second offence to a fine not exceeding fifty pounds, and for the third or any subsequent offence to a fine not exceeding one hundred pounds.

Exemption from penalty.

5. Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

Marking of cases.

6. Every person dealing in margarine in the manner described in the preceding section shall conform to the following regulations:—

Every package, whether open or closed, and containing margarine, shall be branded or durably marked "Margarine" on the top, bottom, and sides, in printed capital letters, not less than three-quarters of an inch square; and if such margarine be exposed for sale, by retail, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one and a half inches square, "Margarine"; and every person selling margarine by retail, save in a package duly branded or durably marked as aforesaid, shall in every

case deliver the same to the purchaser in *or with*¹ a paper wrapper, on which shall be printed in capital letters *not less than a quarter of an inch square*,¹ "Margarine".

7. Every person dealing with, selling, or exposing, or ^{Presump-} offering for sale, or having in his possession for the ^{tion against} purpose of sale, any quantity of margarine contrary to the provisions of this Act, shall be liable to conviction for an offence against this Act, unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter, and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter, and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely upon the above defence.

8. Any margarine imported into the United Kingdom of Great Britain and Ireland, and all margarine whether ^{Margarine imported or manu-} imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine; and it shall be lawful for any officer of Her Majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances, or police constable, authorised under section thirteen of the Sale of Food and Drugs ^{38 & 39} Act, 1875, to procure samples for analysis if he shall ^{Vict., cap. 63.} have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples from any package, and ascertain, if necessary by submitting

¹ Words in italics have been repealed.

the same to be analysed, whether an offence against this Act has been committed.

Registra-
tion of
manufac-
tory.

9. Every manufactory of margarine within the United Kingdom of Great Britain and Ireland shall be registered by the owner or occupier thereof with the local authority from time to time in such manner as the Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct, and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence under this Act.

Power to
inspectors
to take
samples
without
purchase.

10. Any officer authorised to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purposes of analysis samples of any butter, or substances purporting to be butter, which are exposed for sale, and are not marked margarine, as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter.

Appro-
priation of
penalties.

11. Any part of any penalty recovered under this Act may, if the Court shall so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the Court shall consider him entitled.

Proceed-
ings.

12. All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve to twenty-eight inclusive of the Sale of Food and Drugs Act, 1875, and all officers employed under that Act are hereby empowered and required to carry out the provisions of this Act.

Definition
of Local
Authority.

13. The expression "local authority" shall mean any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875.

SALE OF FOOD AND DRUGS ACT, 1899.

62 & 63 Vict., Cap. 51.

An Act to amend the Law relating to the Sale of Food and Drugs. [9th August, 1899.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) If there is imported into the United Kingdom any of the following articles, namely :—

- (a) Margarine or margarine-cheese, except in packages conspicuously marked "Margarine" or "Margarine-cheese," as the case may require ; or Precaution against importation of agricultural and other produce insufficiently marked.
- (b) Adulterated or impoverished butter (other than margarine) or adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the butter or milk or cream has been so treated ; or
- (c) Condensed separated or skimmed milk, except in tins or other receptacles which bear a label whereon the words "Machine-skimmed Milk" or "Skimmed Milk," as the case may require, are printed in large and legible type ; or
- (d) Any adulterated or impoverished article of food to which Her Majesty may by Order in Council direct that this section shall be applied, unless

the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated ; the importer shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2) The word "importer" shall include any person who, whether as owner, consignor, or consignee, agent, or broker, is in possession of, or in anywise entitled to the custody or control of, the article ; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs ; and subject to the provisions of this Act this section shall have effect as if it were part of the Customs Consolidation Act, 1876.

39 & 40
Vict., cap.
36.

(3) The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the foregoing provisions of this section.

(4) Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories, and retain one part.

(5) In any proceeding under this section the certificate of the principal chemist of the result of the analysis shall be sufficient evidence of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness.

(6) If, in any case, the Commissioners of Customs are of opinion that an offence against this section has been committed, they shall communicate to the Board of Agriculture for their information the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

(7) For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health.

2. (1) The Local Government Board may, in relation to any matter appearing to that Board to affect the general interest of the consumer, and the Board of Agriculture may, in relation to any matter appearing to that Board to affect the general interests of agriculture in the United Kingdom, direct an officer of the Board to procure for analysis samples of any article of food, and thereupon the officer shall have all the powers of procuring samples conferred by the Sale of Food and Drugs Acts, and those Acts shall apply as if the officer were an officer authorised to procure samples under the Sale of Food and Drugs Act, 1875, except that—

Power for
Local
Govern-
ment Board
or Board
of Agri-
culture to
sample
articles of
food.

(a) The officer procuring the sample shall divide the same into four parts, and shall deal with three of such parts in the manner directed by section fourteen of the Sale of Food and Drugs Act, 1875, as amended by this Act, and shall send the fourth part to the Board, and

(b) The fee for analysis shall be payable to the analyst by the local authority of the place where the sample is procured.

(2) The Board shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and power on the part of the local authority to cause proceedings to be taken as if the local authority had caused the analysis to be made.

Power for
Local
Govern-
ment Board
or Board
of Agri-
culture to
act in
default of
Local
Authority.

3. (1) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

(2) If the Local Government Board or Board of Agriculture, after communication with a local authority, are of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interests of agriculture in the United Kingdom, as the case may be, the Board concerned may, by order, empower an officer of the Board to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred by the Board or their officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the

Board on demand, and in default the Board may recover the amount of the expenses with costs from the local authority.

(4) For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board.

4. (1) The Board of Agriculture may, after such inquiry as they deem necessary, make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary is proved, that the milk, cream, butter or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis under those Acts.

Power for Board of Agriculture to make regulations as to analysis of milk, cream, butter or cheese.

(2) Any regulations made under this section shall be notified in the *London* and *Edinburgh Gazettes*, and shall also be made known in such other manner as the Board of Agriculture may direct.

5. The provisions of the Margarine Act, 1887, as amended by this Act, shall extend to margarine-cheese, and shall apply accordingly, with the substitution of "margarine-cheese" and "cheese" for "margarine" and "butter," and provided that all margarine-cheese sold or dealt in otherwise than by retail shall either be enclosed

Extension of Margarine Act, 1887, to margarine-cheese. 50 & 51 Vict., cap. 29.

in packages marked in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words "margarine-cheese".

Marking
of margarine
and
margarine-
cheese.

6. (1) Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto.

(2) The letters required to be printed on the paper wrapper in which margarine or margarine-cheese is sold shall be capital block letters not less than half an inch long and distinctly legible, and no other printed matter shall appear on the wrapper.

(3) The words "or with" in section six of the Margarine Act, 1887, shall be repealed.

Provision
as to
manufac-
turers of
and whole-
sale dealers
in margarine
and
margarine-
cheese.

7. (1) Every occupier of a manufactory of margarine or margarine-cheese, and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture.

(2) Any officer of the Board of Agriculture shall have power to enter at all reasonable times any manufactory of margarine or margarine-cheese, and to inspect any process of manufacture therein, and to take samples for analysis.

(3) If any such occupier or dealer—

(a) fails to keep such a register, or

(b) refuses to produce the register when required to do so by an officer of the Board of Agriculture, or

(c) fails to keep the register posted up to date, or

(d) wilfully makes any entry in the register which is false in any particular, or

(e) fraudulently omits to enter any particular which ought to be entered in the register,

he shall be liable on summary conviction for the first offence to a fine not exceeding ten pounds, and for any subsequent offence to a fine not exceeding fifty pounds.

(4) The provisions of section nine of the Margarine Act, 1887, relating to registration of manufactories shall extend to any premises wherein the business of a whole-sale dealer in margarine or margarine-cheese is carried on.

50 & 51
Vict., cap.
29.

(5) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the Board of Agriculture.

8. It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than ten per cent. of butter fat, and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage, shall be guilty of an offence under the Margarine Act, 1887, and any defence which would be a defence under section seven of that Act shall be a defence under this section, and the provisions of the former section shall apply accordingly.

Restriction
on amount
of butter
fat in mar-
garine.

Provided that nothing in this section shall apply to any margarine manufactured or imported in fulfilment of any contract made before the twentieth day of July one thousand eight hundred and ninety-nine.

Provisions
as to name
and ad-
dress of
person sell-
ing milk or
cream in
a public
place.

9. Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle

his name and address, and in default shall be liable on summary conviction to a fine not exceeding two pounds.

Division
of samples
taken in
course of
delivery or
transit.

10. In the case of a sample taken of milk in course of delivery, or of margarine or margarine-cheese forwarded by a public conveyance, the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the consignor if his name and address appear on the can or package containing the article sampled.

Provisions
as to con-
densed
separated
or skimmed
milk.

11. Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section he shall be liable on summary conviction to a fine not exceeding ten pounds.

Notice of
mixtures.
38 & 39
Vict., cap.
63.

12. The label referred to in section eight of the Sale of Food and Drugs Act, 1875, shall not be deemed to be distinctly and legibly written or printed within the meaning of that section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label: Provided that nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before the commencement of this Act; but the Comptroller-General of Patents, Designs and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment.

13. In section fourteen of the Sale of Food and Drugs Act, 1875, the words "offer to" and the words "proceed accordingly and shall" shall be repealed.

Amendment of 38 & 39 Vict., cap. 63, as to samples.

14. The provisions of section three and section four of the Sale of Food and Drugs Act Amendment Act, 1879 (relating to the taking of samples of milk in course of delivery), shall apply to every other article of food: Provided that no samples shall be taken under this section except upon the request or with the consent of the purchaser or consignee.

Taking samples in course of delivery. 42 & 43 Vict., cap. 30.

15. In section sixteen of the Sale of Food and Drugs Act, 1875, the words "registered parcel" shall be substituted for the words "registered letter".

Amendment of 38 & 39 Vict., cap. 63, as to registered parcels.

16. Any person who wilfully obstructs or impedes any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent, the due execution by such inspector or officer of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

Obstruction of officer in discharge of his duties.

17. (1) Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to twenty pounds as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

Penalties for offences under Sale of Food and Drugs Acts.

(2) Where, under any provision of the Sale of Food and Drugs Acts, a person guilty of an offence is liable to a fine exceeding fifty pounds, and the offence, in the

opinion of the court, was committed by the personal act, default, or culpable negligence of the person accused, that person shall be liable (if the court is of opinion that a fine will not meet the circumstances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months.

Articles
sold in tins
or packets.
38 & 39
Vict., cap.
63.

18. Notwithstanding anything in section seventeen of the Sale of Food and Drugs Act, 1875, where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained.

Time for
proceeding
and regu-
lation as to
summons.

19. (1) When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in section twenty of the Sale of Food and Drugs Act, 1875, shall not be instituted after the expiration of twenty-eight days from the time of the purchase.

(2) In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less time than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

Provision
as to use of
warranty
or invoice
as defence,
and pro-
ceedings
against the
warrantor.

20. (1) A warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice,

and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person.

(2) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

(4) Where the defendant is a servant of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section twenty-five of the Sale of Food and Drugs Act, 1875, and section seven of the Margarine Act, 1887, in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

(5) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of section twenty-five of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts for giving the warranty relied on by the defendant in such prosecution, may be taken as well before a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis

as before a court having jurisdiction in the place where the warranty was given.

(6) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be liable on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true.

Duty of
Court to
send
article for
analysis.
38 & 39
Vict., cap.
63.

21. The justices or Court referred to in section twenty-two of the Sale of Food and Drugs Act, 1875, shall on the request of either party under that section cause an article of food or drug to be sent to the Commissioners of Inland Revenue for analysis, and may, if they think fit, do so without any such request.

Provision
as to certi-
ficates of
analysis.

22. (1) At the hearing of the information in any proceeding under the Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in section eighteen of the Sale of Food and Drugs Act, 1875, shall be sufficient evidence of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness.

(2) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

23. This Act shall apply to Scotland with the substitution for "the Local Government Board" of "the Local Government Board for Scotland," and all powers and duties vested in or imposed on the Secretary for Scotland in relation to the Sale of Food and Drugs Acts shall be transferred to, vested in, or imposed on the Local Government Board for Scotland.

Transfer of powers from Secretary for Scotland to Local Government Board.

24. This Act shall apply to Ireland with the substitution for "the Board of Agriculture" of "the Department of Agriculture and Technical Instruction for Ireland," and for "the Local Government Board" of "the Local Government Board for Ireland," and for "the *London and Edinburgh Gazettes*" of "the *Dublin Gazette*".

Application to Ireland.

25. In this Act, unless the context otherwise requires—
The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk.

Interpretation of terms.

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk.

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression "public analyst" means an analyst so appointed.

Other expressions have the same meaning as in the Sale of Food and Drugs Acts, and an offence under this Act shall be treated as an offence under those Acts.

26. For the purposes of the Sale of Food and Drugs Acts the expression "food" shall include every article used for food or drink by man, other than drugs or water,

Definition of "food".

and any article which ordinarily enters into or is used in the composition or preparation of human food ; and shall also include flavouring matters and condiments.

Repeal of enactments in Schedule.

27. The enactments in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Short title and commencement.

38 & 39
Vict., cap.

63.

42 & 43
Vict., cap.

30.

50 & 51
Vict., cap.

29.

28. (1) This Act may be cited as the Sale of Food and Drugs Act, 1899, and the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887, and this Act may be cited collectively as the Sale of Food and Drugs Acts, 1875 to 1899, and are in this Act referred to as the Sale of Food and Drugs Acts.

(2) This Act shall come into operation on the first day of January one thousand nine hundred.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
38 & 39 Vict. c. 63	The Sale of Food and Drugs Act, 1875.	In section two, the definition of the term "food". In section fourteen, the words "offer to," and the words "proceed accordingly and shall". Section fifteen. In section twenty-seven, the words from "Every person who shall give a false warranty in writing" to "a penalty not exceeding twenty pounds".
42 & 43 Vict. c. 30	The Sale of Food and Drugs Act Amendment Act, 1879.	Section ten.
50 & 51 Vict. c. 29	The Margarine Act, 1887.	In section six, the words "or with," and the words "not less than a quarter of an inch square".
54 & 55 Vict. c. 46	The Post Office Act, 1891.	Section eleven.

APPENDIX.

GENERAL ORDER OF LOCAL GOVERNMENT BOARD.

MARGARINE AND MARGARINE-CHEESE.

REGISTRATION OF MANUFACTORIES AND PREMISES.

TO THE OWNERS AND OCCUPIERS for the time being of Manufactories of, and to the Wholesale Dealers in, Margarine or Margarine-Cheese in England and Wales;—

To the several Local Authorities under the Margarine Act, 1887, and the Sale of Food and Drugs Act, 1899, for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by Section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), provision was made for the Registration of every Manufactory of Margarine in England and Wales by the owner or occupier thereof with the local authority from time to time in such manner as We, the Local Government Board, might direct;

And whereas by an Order dated the 22nd day of December, 1887 (hereinafter referred to as "the Order of 1887"), We directed the manner of Registration under the Act of 1887 of every such Manufactory of Margarine;

And whereas by Section 5 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act of 1899"), it is enacted that the provisions of the Act of 1887, as amended by the Act of 1899, shall extend to Margarine-cheese as defined by that Act, and shall apply accordingly with the substitution of "Margarine-cheese" for "Margarine";

And whereas by sub-section (4) of Section 7 of the Act of 1899 it is enacted that the provisions of Section 9 of the Act of 1887 relating to Registration of Manufactories shall extend to any premises wherein the business of a wholesale dealer in Margarine or Margarine-cheese is carried on;

NOW THEREFORE, We, the Local Government Board, hereby Order and Direct as follows:—

Article I.—This Order shall come into operation forthwith, and shall remain in force until We shall otherwise direct; and the Order of 1887 is hereby rescinded:

Provided that in every case where a Manufactory of Margarine, or an owner or occupier carrying on the manufacture of Margarine has been duly registered, and such registration has effect at the date of this Order, such registration shall, notwithstanding the rescission of the Order of 1887 but subject to the provisions of Article IV. of this Order, continue to have effect: Provided also, that any book which prior to the date of this Order has been used by a local authority in pursuance of the Order of 1887 for purposes of registration shall, so far as such book contains any entry applicable to any such case as aforesaid, be deemed to be part of the register of the local authority for the purposes of this Order.

Article II.—Every owner or occupier of a Manufactory of and every wholesale dealer in Margarine or Margarine-cheese in England and Wales who shall make application to the proper local authority for a Certificate of Registration under the Act of 1887 and the Act of 1899, or under either of the said Acts, shall, in his application, state the following particulars:—

- (a) The name and address of the owner or occupier or wholesale dealer making the application.
- (b) The situation of the manufactory, or of the premises where-in the business of the wholesale dealer is carried on.
- (c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business.

Every such application shall be signed by the person making the same, or by some one acting on his behalf.

Article III.—If the application is in due form, the local authority shall cause the Manufactory, or the Premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a Certificate, in the Form A set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

Article IV.—Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the Manufactory, or by the wholesale dealer carrying on the business, to the local authority, and the Register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the Certificate in accordance with the Form B set forth in the said Schedule.

SCHEDULE.

FORM A.

Certificate under the Margarine Act, 1887,
50 & 51 Vict. c. 29,
[or] [and]
[the Sale of Food and Drugs Act, 1899,
62 & 63 Vict. c. 51].

This is to certify that the¹ _____
known as _____
situate at _____
at which the² _____
³ _____
is [or are] at present carried on by⁴ _____
the⁵ _____ thereof,
has [or have] been duly registered by⁶ _____
in accordance with the provisions of the⁷ _____
in that behalf, on the application of⁸ _____

Dated this _____ day of _____, in the year One
thousand nine hundred.

Signed _____

Clerk to the [here insert name of Local Authority].

Directions for filling up this Certificate.

Insert—

- ¹ "Manufactory" or "premises," or both, as the circumstances require.
- ² "Manufacture of" or "business of a wholesale dealer in," or both, as the circumstances require.
- ³ "Margarine" or "Margarine-cheese," or both, as the circumstances require.
- ⁴ Name of the owner or occupier.
- ⁵ "Owner" or "occupier".
- ⁶ The name of the Local Authority within whose District the manufactory or premises is or are situate.
- ⁷ "Margarine Act, 1887," or "Sale of Food and Drugs Act, 1899," or both, as the circumstances require.
- ⁸ Name of applicant.

FORM B.

Endorsement on Certificate in case of change in persons carrying on the manufacture or business_____

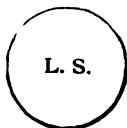
This is to certify that _____ has been duly registered as the ¹_____ carrying on the ²_____ ³_____ in the within-named ⁴_____ in the place of _____

Dated this _____ day of _____, in the year One thousand nine hundred.

Signed _____

Clerk to the [*here insert name of Local Authority*].

Given under the Seal of Office of the Local Government Board, this Twenty-sixth day of February, in the year One thousand nine hundred.



HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

Directions for filling up this Certificate.

Insert—

- ¹ "Owner" or "occupier".
- ² "Manufacture of" or "business of a wholesale dealer in," or both, as the circumstances require.
- ³ "Margarine" or "Margarine-cheese," or both, as the circumstances require.
- ⁴ "Manufactory" or "premises," or both, as the circumstances require.

APPENDIX.

GENERAL ORDER OF LOCAL GOVERNMENT BOARD.

APPOINTMENT OF ANALYST.

REGULATION AS TO COMPETENCY.

TO THE SEVERAL LOCAL AUTHORITIES for the time being required by law to appoint a Public Analyst;—
And to all others whom it may concern.

WHEREAS by the Sale of Food and Drugs Acts provision is made for the appointment by certain Local Authorities of persons to act as Analysts of all articles of Food and Drugs, and every such appointment is made subject to the approval of the Local Government Board;

And whereas by sub-sections (1) and (5) of Section 3 of the Sale of Food and Drugs Act, 1899 (herein-after referred to as "the Act"), it is enacted as follows:—

"(1) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst . . .

"(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board."

And whereas by Section 25 of the Act it is enacted as follows:—
"In this Act unless the context otherwise requires—

"The expression 'local authority' means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression 'public analyst' means an analyst so appointed."

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us by sub-section (5) of Section
(167)

3 of the Act, do hereby Order that the following regulation shall have effect; that is to say,—

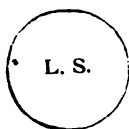
Every person appointed on or after the First day of January, One thousand nine hundred, to the office of Public Analyst shall furnish such proof as We may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy.

Such proof shall in every case comprise documentary evidence that such person holds the requisite certificate, diploma, licence, or document conferring the qualification or attesting his possession of the skill or knowledge to which the same applies, and granted or issued by any person or body of persons for the time being recognised by Us as competent to confer such qualification or to test such skill or knowledge. Such proof shall also comprise such further evidence as We may in any particular case require.

All such documentary evidence as is herein-before mentioned shall be furnished by such person to the Local Authority by whom he is appointed and shall be transmitted to Us by the Local Authority when applying for Our approval of the appointment:

Provided that nothing in this Regulation contained shall, in the case of any person who was appointed to the office of Public Analyst with Our approval between the First day of January, One thousand eight hundred and ninety-one, and the date hereof, or of any person who is so appointed for the first time after such last-mentioned date, apply upon any subsequent appointment of such person to the said office.

Given under the Seal of Office of the Local Government Board, this Seventh day of March, in the year One thousand nine hundred.



HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

BOARD OF AGRICULTURE RULES.

(DATED 5TH AUGUST, 1901.)

SALE OF MILK REGULATIONS, 1901.

The Board of Agriculture, in exercise of the powers conferred on them by Section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations:—

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

3. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

EXTENT.

4. These regulations shall extend to Great Britain.

APPENDIX.

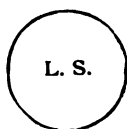
COMMENCEMENT.

5. These regulations shall come into operation on the First day of September, One thousand nine hundred and one.

SHORT TITLE.

6. These Regulations may be cited as the Sale of Milk Regulations, 1901.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this fifth day of August, One thousand nine hundred and one.



T. H. ELLIOTT,
Secretary.

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